UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

MARY D. STELZL, Plaintiff, vs. CAROLYN W. COLVIN[1], Commissioner of Social Security, Defendant.	)	No. 03:12-cv-01102-HU **FINDINGS & RECOMMENDATION**

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[1]Carolyn W. Colvin became acting Commissioner of Social Security on February 24, 2013. Therefore, pursuant to Federal Rule of Civil Procedure 25(d), she is automatically substituted for Michael J. Astrue as Defendant in this case.

HUBEL, United States Magistrate Judge:

The plaintiff Mary D. Stelzl seeks judicial review, pursuant to 42 U.S.C. § 405(g), of the Commissioner's final decision denying her applications for Disability Insurance benefits under Title II of the Social Security Act, 42 U.S.C. § 1381 *et seq.*, and Supplemental Security Income benefits under Title XVI of the Act. Stelzl argues the Administrative Law Judge ("ALJ") erred in failing to give legally sufficient reasons for rejecting Stelzl's testimony, her mother's testimony, and the opinions of her treating psychiatrist and counselors; and in relying on vocational testimony that was based on an inadequate hypothetical question. *See* Dkt. ## 14 & 18.

I. PROCEDURAL BACKGROUND

Stelzl protectively filed her applications for DI and SSI benefits on October 14, 2008, at age 37, claiming disability since January 19, 1971 (Stelzl's date of birth), due to Asperger's Syndrome, Type I diabetes, migraines, lower back problems, and sleep apnea. (A.R. 12, 124-31[2]) Stelzl indicated these conditions cause her problems "interacting socially with customers, clients, co-workers and supervisers [sic]"; multi-tasking; blacking out if

[2]The administrative record ("A.R.") was filed electronically using the court's CM/ECF system. Dkt. #11 and attachments. Pages of the A.R. contain at least three separate page numbers: two located at the top of the page, consisting of the CM/ECF number (e.g., Dkt. #11-7, Page 17 of 89) and a Page ID#; and a page number located at the lower right corner of the page, representing the numbering inserted by the Agency. Some pages also contain a page number inserted by the office supplying the records. Citations herein to "A.R." refer to the agency numbering in the lower right corner of each page.

her blood sugar gets too low; numbness in her fingers and wrists; severe migraines brought on by stress or anxiety; and the inability "to do any type of physical work due to the risk of [her] disabilities." (A.R. 158) Stelzl's applications were denied initially and on reconsideration. (A.R. 75-88, 91-97) Stelzl requested a hearing (A.R. 98-99), and a hearing was held on September 8, 2010, before an ALJ. Stelzl was represented by an attorney at the hearing. Witnesses at the hearing included Stelzl, her mother, and a Vocational Expert ("VE"). (A.R. 33-74) On November 19, 2010, the ALJ issued her decision, denying Stelzl's applications for benefits. (A.R. 9-22) Stelzl appealed the ALJ's decision, and on April 26, 2012, the Appeals Council denied her request for review (A.R. 1-4), making the ALJ's decision the final decision of the Commissioner. *See* 20 C.F.R. §§ 404.981, 416.1481. Stelzl filed a timely Complaint in this court seeking judicial review of the Commissioner's final decision denying her applications for DI and SSI benefits. Dkt. #1. The matter is fully briefed, and the undersigned submits the following findings and recommended disposition of the case pursuant to 28 U.S.C. § 636(b)(1)(B).

II. FACTUAL BACKGROUND

A. Summary of the Medical Evidence

On January 28, 1983, at age 12, Stelzl underwent an EEG in the Neurodiagnostic Unit of Saint John's Hospital & Health Center, in Santa Monica, California. The EEG was "abnormal," and "[a]lthough not diagnostic of seizures, the abnormalities . . . [were] very suggestive of an underlying seizure disorder." (A.R. 231)

The record contains a letter dated October 31, 1995, from psychiatrist Mary H.F. Christianson, M.D. No treatment notes or other records from Dr. Christianson appear in the record. In the letter, Dr. Christianson states Stelzl, then age 25, had been treated with "supportive psychotherapy throughout her developing years." The doctor further stated as follows:

> Miss Stelzl had severe learning disability, borderline intelligence and immature behavior which manifested itself by inappropriate behavior for her age and at times poor judgement. Since age 7 with continual parental support, appropriate private schools, educational tutoring, and supportive psychotherapy, Miss Stelzl has been able to make an adjustment to independent life and minimal wage employment. However, she will continue to need financial assistance, medical assistance for her diabetes and from time to time supportive therapy.

(A.R. 537) Dr. Christianson commended Stelzl's parents, and expressed the hope that they would "continue the ongoing support that [Stelzl] most likely will need." (*Id.*) The letter is addressed "To Whom It May concern," and there is no indication in the record regarding to whom the letter was directed or for what purpose it was written.

The record contains no further evidence of Stelzl's physical or mental health until March 28, 2002, when Stelzl was seen in the emergency room with a complaint of "blood sugar control problems." (A.R. 421; *see* A.R. 421-25) Stelzl was noted to be "somewhat of a poor historian." (A.R. 421) She was unable to give accurate information about what medications she was taking. She stated she had last seen her doctor in January 2002, but records indicated she had seen her doctor on March 11, 2002. Stelzl complained of intermittent, nonspecific abdominal pain for the preceding two

months. She also described some episodes of "black outs" in connection with low blood sugars. The ER physician discussed Stelzl's case with another doctor who was on call for Stelzl's primary care physician, Internal and Preventive Medicine specialist Geraldine Darroca, M.D. The doctors made some adjustment to Stelzl's insulin dosing schedule, but indicated she needed "very close follow-up" for management of her diabetes. (A.R. 423-24)

On April 10, 2002, Stelzl saw Internal Medicine specialist Ronald Cirullo, M.D. for an endocrinology evaluation, on referral from Dr. Darroca. (A.R. 284-86, 353-55) Notes indicate Dr. Cirullo had treated Stelzl in 1996 and 1997, and she had been followed by another doctor in the interim. Stelzl reported "marked variability in blood sugars including frequent hypoglycemic episodes." (A.R. 284) The adjustment to her medications by the ER physicians had not yielded satisfactory results. Stelzl expressed frustration with her variable blood sugars, and notes indicate she "tend[ed] to overcompensate [in her insulin dosing] in both directions." (*Id.*) Stelzl had been living with her mother due to Stelzl's difficulty maintaining her blood sugars. Her mother accompanied her to this appointment, and the doctor noted Stelzl and her mother "had some interchange here today, which indicates that they may not be on the same page as far as control of [Stelzl's] blood sugars and her insulin." (*Id.*) Notes indicate Stelzl is 5'1" tall, and at this time her weight was 156 pounds. The doctor counseled Stelzl about the importance of making insulin adjustments not only based on her blood sugar level, but also on her carbohydrate intake. He prescribed a new plan of action for

monitoring blood sugar and carbohydrates, and directed Stelzl to return in one week for followup.

Stelzl saw Dr. Cirullo again on April 16, 2002, to check on her blood sugars and insulin dosage. Stelzl was doing better, and the doctor scheduled her to meet with a dietician to discuss carbohydrate management and its relationship to insulin dosing. (A.R. 352)

On June 24, 2002, Stelzl saw Dr. Cirullo and a dietician for followup. Stelzl was having ongoing difficulty making decisions about her insulin dosage. The doctor reviewed this with her "again at length." (A.R. 350) Stelzl's mother was present, and indicated she would help Stelzl with her dosage. The doctor indicated proper dosage was necessary to avoid the hypoglycemic episodes Stelzl was experiencing. (*Id.*)

Stelzl saw Dr. Cirullo on July 29, 2002, for followup. Her blood sugar was fluctuating widely. The doctor noted Stelzl was not calculating her carbohydrates accurately, and as a result, she was not using the correct amount of insulin. Stelzl also was not including in her calculations her level of physical activity, which included gardening, shopping, and cleaning her house. Stelzl was frustrated and irritable when discussing her diabetes. She was counseled in monitoring her carbohydrate intake and blood sugar levels, and was directed to keep a log and bring it to the doctor in four days for review. Dr. Cirullo noted Stelzl "has had diabetes for many years and has been frustrated with this but also has an obvious limited capacity for understanding even at her age." (A.R. 348)

Stelzl returned to see Dr. Cirullo for followup on August 20, 2002. Stelzl's blood sugars had shown "[t]remendous improvement," and were "much more stable" on her new plan. (A.R. 281) The doctor noted Stelzl was "starting to make good decisions about her diabetes management." (*Id.*) She was feeling better overall, and the doctor hoped Stelzl would continue following her plan with regard to carbohydrate intake and insulin dosing. (*Id.*; A.R. 345-46)

Stelzl returned to see Dr. Cirullo on November 12, 2002, for followup. She also saw a dietician. The doctor noted, "We have been working with [Stelzl] over the past few months to adjust carbohydrate and insulin. She seems to be doing a reasonable job of making adjustments and is very meticulous recording her carbohydrate and insulin information. Review of blood sugars for the past few months shows she has used fairly good judgment in adjusting insulin to her carbohydrates." (A.R. 276) Stelzl's weight at this time was 151.4 pounds. Stelzl was counseled regarding the relationship between her diet, medications, and blood sugar levels. (A.R. 277, 343-44)

Stelzl saw Dr. Cirullo for followup on January 21, 2003. (A.R. 274-75) Stelzl was adhering to her recommended diet, and administering insulin as needed to keep her blood sugars under control. She was having hypoglycemic episodes that were of some concern, and the doctor recommended "a graded snack based upon her blood sugars" to address those episodes. Her medications and insulin dosing schedule were adjusted. (A.R. 275, 341-42)

On May 29, 2003, when she was 32 years old, Stelzl underwent a consultative evaluation at the Child Development Clinic of the

Oregon Health & Science University (the "CDRC"). (A.R. 233-43) Stelzl's mother referred her for the evaluation due to concerns that Stelzl might have Asperger's Syndrome. Her mother expressed particular concerns about Stelzl's ongoing difficulties with social interactions and communication. Stelzl and her mother provided the following history:

> Family's first developmental/behavioral concerns were when [Stelzl] was in nursery school. Teacher raised the question of seizures as [Stelzl] spent much of the time not listening, staring, or apparently self-absorbed. Episodes were not seizures but indicative of difficulty engaging [Stelzl] in school activities, particularly group activities. She has a history of being a slow learner as well as ongoing behavioral concerns. She was evaluated by a child psychiatrist at ten years of age and was treated with Ritalin for apparent ADHD (attention-deficit hyperactivity disorder), inattentive type, for several months, and this medication was discontinued as it appeared to be ineffective. She has received special educational support in school and attended a private high school where she received special education support for math as well as tutors. Currently, [Stelzl] is working in a real estate office three days per week and doing volunteer work one day a week. She lives independently with minimal support from her mom. She does have ongoing issues with anxiety and depression and does prefer a definite schedule or structure to her day. She describes herself as nervous in big groups. She has no friends here. She does have some repetitive behaviors such as checking locks and burners on the stove, though does not describe obsessions. She has shown no recent change in activity level, routines, appetite, or other somatic issues. . . .
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> [Stelzl] also has complicated health issues, particularly insulin-requiring diabetes. She has had difficulties with self-management in the past[;] however apparently this is improved at this time. She does have monthly appointments with her primary care physician and a nutritionist. Her most recent hemoglobin A1C was in an acceptable range. . . .

> Diagnosis of diabetes was made at 15 years of age.

(A.R. 234) Stelzl's diabetes management was noted to be "stable" . . . although she [was] receiving a good deal of ongoing support from primary care office and the nutritionist." (A.R. 235)

Stelzl's mother provided further information regarding Stelzl's educational history:

> Academically, [Stelzl] did attend private schools and often had tutors for both reading and math. She was evaluated cognitively in 1982 at the age of 11 when she was in the middle of fifth grade. At that time, she earned a verbal IQ of 88, performance IQ of 80, and full scale IQ of 83. IQ scores were somewhat lower than those on the Wide Range Achievement Test, which is essentially a screening test for academics. She was also three years below grade level on the ITPA language test. On the Wide Range Achievement Test, she earned grade equivalents of 7.1 for reading, 6.2 for spelling, and 4.5 for math. She was diagnosed with a severe processing deficit with low visual matching skills and low short-term memory and reading comprehension. In 1995, she received some psychotherapy for her severe learning disability, low average IQ, and immaturity. Previous to this time at the age of six, she had had a psychiatry referral because of explosive behavior and apparently had another IQ test done yielding a Binet IQ of 97 and a nonverbal WISC IQ of 89. There seems to be a pattern of relative strengths in verbal skills and somewhat lower skills in nonverbal performance.

(A.R. 236)

Stelzl reportedly had few friends throughout her life, with "significant difficulties with the reciprocity of . . . conversation." (A.R. 237) Her mother described her as "very rigid," and easily upset by crowds, with regular "[m]eltdowns and upsets." (*Id.*) According to her mother, Stelzl even had problems with small family dinners outside of her ordinary routine. (*Id.*)

Stelzl stated she "does drive and lives in a duplex owned by her father[.]" (*Id.*) She had a part-time job "in an office doing filing," but stated she had "difficulty with spatial directions in that she [could] not go on multiple errands finding her way from one place to the next but often ha[d] to come back to home base in between errands, so that she [knew] how to get places." (*Id.*)

Pediatric Psychologist Debra Eisert, Ph.D. noted Stelzl made "inconsistent eye contact" throughout the assessment, talking rapidly, and moving rapidly "from one topic to another often in a tangential manner." (*Id.*) The doctor observed that Stelzl "misses social cues, does not know what to do when the listener is dis-interested, and often gives too much detail about her daily life." (*Id.*) She had pervasive "speech abnormalities we often associate with autism such as rapid rate and odd intonation." (*Id.*) The doctor indicated Stelzl "does not have a reasonable conversation for someone who is 32. Eye contact and facial expressions are unusual, and she does not seem to enjoy the interaction. However, she has a fairly good vocabulary for emotional experiences and describes feeling mortified and humiliated when describing an experience with her ex-husband." (*Id.*)

Stelzl also described periodic bouts of depression, including having thoughts of committing suicide by "not taking her medication, starving herself, or overdosing." (A.R. 238) Stelzl stated she enjoyed watching television, attending an Asperger's support group, and "doing things in her yard." (*Id.*)

Dr. Eisert concluded Stelzl "does meet some of the criteria for Asperger syndrome, including social and communication characteristics." (*Id.*) She recommended Stelzl be evaluated by a

psychiatrist "to determine whether her depression and anxiety symptoms warrant treatment." (*Id.*) A social worker who evaluated Stelzl concurred in the recommendation that she receive a psychiatric evaluation. (A.R. 243)

Stelzl also underwent a speech and language evaluation by Speech/Language Pathologist Kyra Carroll. On the Adolescent Test of Problem Solving, Stelzl scored 36, "an average score for someone 12 years 11 months [of age]." (A.R. 240) Carroll noted that, overall, Stelzl's "communication style of hyperverbosity, unusual intonation and loudness patterns, limited eye contact and pragmatic skills, as well as some tendency to take things literally and perseverate during communication are consistent with a diagnosis of Asperger syndrome. However, they may also be indicative of other social communication problems[.]" (*Id.*)

After evaluating Stelzl fully, and "researching [Stelzl's] questions about a diagnosis of Asperger Syndrome," the CDRC staff wrote to Stelzl on September 11, 2003, to inform her of their determination "that a provisional diagnosis of Asperger Syndrome is appropriate." (A.R. 244) Dr. Eisert explained that the provisional diagnosis meant the staff believed the diagnosis was accurate, although some of Stelzl's symptoms were "currently difficult to qualify." (*Id.*) Dr. Eisert informed Stelzl that her diagnosis qualified her "for all appropriate services designed for people with Asperger syndrome such as support groups, therapy, vocational supports and educational accommodations." (*Id.*)

In the interim between Stelzl's evaluation by the CDRC staff, and the letter explaining her provisional diagnosis, Stelzl underwent a psychiatric evaluation by psychiatrist Rebecca Gordon,

M.D. (A.R. 309-12) The evaluation took place in two sessions, on June 24 and July 8, 2003. Stelzl stated the CDRC diagnosis of Asperger's disorder "was uncertain," and she questioned whether she met the criteria for the disorder. Stelzl also stated she was "looking for a job," and had "trust issues." (A.R. 309) Stelzl reported good appetite and sleep, no recent weight changes, no daytime napping, and up-and-down energy fluctuations. She stated she had experienced depression with suicidal ideations about a month before the first evaluation session. She described her self-esteem as "shaky," and stated she frequently became irritated with her family members. However, Stelzl did not consider herself to be particularly anxious, and reported no specific phobias or panic episodes. She reported a couple of compulsive behaviors; i.e., "checking locks several times before going to bed," and "check[ing] her watch constantly." (*Id.*)

Stelzl indicated she had a long history of seeing therapists. She began seeing a therapist at age ten for temper tantrums, and saw the therapist for many years. Ritalin was tried briefly, with no apparent benefit, and she had not tried any other psychotropic medications. Stelzl reported a history of migraine headaches, insulin-dependent diabetes type I since age 14, and "a high pain tolerance." (A.R. 310) Dr. Gordon did not administer any tests; her mental status examination consisted of interviewing Stelzl and observing her during the interview. The doctor noted Stelzl appeared to be of average intelligence. She had intact memory to both recent and remote events. Her affect was "constricted and blunted[,]" and she had "good eye contact but little facial expression. Thought processes were logical, goal-oriented and coherent.

Thought content was reality based." (A.R. 311) Stelzl displayed only fair insight into her problems, and fair judgment. Although her demeanor was pleasant, Dr. Gordon had the sense that Stelzl was "somewhat disconnected emotionally from the situation." (*Id.*)

Dr. Gordon's Axis I diagnosis was: "Depressive disorder, NOS. Asperger's disorder. Rule out dysthymia versus major depression. Rule out anxiety disorder. Rule out obsessive/compulsive disorder." (*Id.*) She estimated Stelzl's current GAF at 50.[3] Dr. Gordon indicated Stelzl met the DSM-IV criteria for Asperger's disorder and depressive disorder NOS. She recommended Stelzl increase the time she spent around peers, and perhaps obtain "some training on how to interact with others." (*Id.*) She also recommended Stelzl obtain therapy to assist her in "[c]oming to terms with [the] criteria of Asperger's disorder, [and] learning how to help herself from falling into depression." (*Id.*) Dr. Gordon met with Stelzl again on July 17 and 28, 2003, to discuss her evaluation results, the DSM-IV criteria for Asperger's disorder, and her provisional diagnosis. (A.R. 307)

On August 19, 2003, Stelzl saw Dr. Cirullo for followup of her Type 1 diabetes, migraine headaches, hypertension, and hyperlipidemia. Her blood sugars and hypoglycemic episodes were under better control, and her medications were continued without change. (A.R. 272-73, 339-40)

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[3]A GAF level of 50 is consistent with "'serious symptoms (e.g., suicidal ideation, severe obsessional rituals, frequent shoplifting) OR any serious impairment in social, occupational, or school functioning (e.g., no friends, unable to keep a job).'" *McFarland v. Astrue*, 288 Fed. Appx. 357,1 369 (9th Cir. 2008) (quoting Am. Psych. Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV-TR) (4th ed. 2000).

Stelzl and her mother saw Dr. Gordon on September 15, 2003, "to discuss provisional diagnosis of Asperger's disorder, along with adjustment disorder, NOS." (A.R. 306) Stelzl's mother thought it was important for Stelzl to know about the disorder "as it may assist her in connecting with others." (*Id.*) Dr. Gordon encouraged Stelzl to interact with others, such as going out to lunch and joining a group. (*Id.*)

Stelzl saw Dr. Gordon again on October 16, 2003. Stelzl "report[ed] increased socialization, attending a social skills class for people with Asperger's where she ha[d] met a new woman friend with whom she [was] spending much time." (A.R. 305) Stelzl was attending the Asperger's group monthly, and was working on learning to read people's facial expressions and increasing eye contact. She stated facial expressions were "a foreign language to her." (*Id.*)

On December 4, 2003, Stelzl saw Dr. Cirullo for followup of her Type 1 diabetes. Stelzl's blood sugars were "doing very well," and Stelzl was actively "monitoring her carbohydrates and adjusting insulin appropriately." (A.R. 267) Her medications were continued without change. (A.R. 337-38)

On December 15, 2003, Stelzl saw Dr. Gordon, reporting that she was doing well. She continued to work part time, and had been "attending a social skills class where she [was] learning things such as eye contact, how to compliment people and not interrupting others." (A.R. 304) Stelzl was enjoying the class, and had met a new friend with whom she had been spending a lot of time. She had applied for Vocational Rehabilitation, and was "applying for state jobs, [and] looking into basic computer classes." (*Id.*)

Dr. Gordon noted Stelzl's affect was bright; she smiled and laughed appropriately; she denied any major depressive episodes recently; and she felt things were going well for her. She was directed to return in three months for followup. (*Id.*)

Stelzl saw Dr. Gordon for followup on March 8, 2004. Stelzl reported having several "low days" over the previous few weeks, with "[m]ild to moderate feelings of anger and irritability." (A.R. 303) She had experienced some thoughts of suicide two weeks earlier, "with the thought of 'getting into [her] car to do it.'" (*Id.*) She had broken up with a boyfriend, and had been in a stressful interaction with a friend Stelzl described as "too pushy, to the point of harassment." (*Id.*) Stelzl was "taking a typing class, . . . job-hunting, and . . . working with a case manager on finding a job through the state." (*Id.*) Her affect was unchanged. The doctor prescribed a trial of Prozac, starting at 10 mg. daily for one week, and then increasing to 20 mg. daily. She directed Stelzl to return for followup in three weeks. (*Id.*)

On April 5, 2004, Stelzl saw Dr. Gordon for followup. Stelzl reported, "I'm doing great; things couldn't be better." (A.R. 302) She was attending meetings of the Autism/Asperger's support group, and her sleep, appetite, and energy were "great." (*Id.*) She had resumed a relationship with her boyfriend, and reportedly was "[s]till job-hunting." (*Id.*) Her mood generally was good, with "very few anxieties." (*Id.*) She was not experiencing any adverse effects from the Prozac, and the doctor noted Stelzl's depressive disorder was "much improved" on the medication. (*Id.*) Stelzl was directed to return for followup in two months. (*Id.*)

On June 10, 2004, Stelzl saw P.A. John R. Nelson, in Dr. Cirullo's office, for followup and evaluation of a recent episode of hypoglycemia. P.A. Nelson indicated Stelzl had "developed profound hypoglycemic unawareness." (A.R. 368) He revised Stelzl's insulin dosages, and instructed her "to practice permissive hyperglycemia" in order to regain her hypoglycemic awareness. He also ordered a coronary risk panel, and a metabolic panel. (A.R. 369)

Stelzl saw Dr. Gordon on June 22, 2004, for followup. Her weight at that time was 150 pounds. She was taking Prozac 20 mg. daily, with no adverse effects. Stelzl indicated the Prozac had been "extremely beneficial." (A.R. 301) She had more energy, was sleeping less, and felt happier. She stated she was keeping herself busy so she would be tired at the end of the day. Her affect was bright, and eye contact was better. Her speech was "nonpressured, normal rate, with no perceptual distortions." (*Id.*) Stelzl had "become quite involved with several friends through the Asperger's group. She continue[d] to search for a new job, applying for a state job, with the help of a state and vocational rehab counsel[or]." (*Id.*) She planned to sign up for a computer class. The Prozac was continued without change, and Stelzl was directed to return for followup in three months. (*Id.*)

Stelzl saw Dr. Cirullo on August 18, 2004. Stelzl continued to have problems regulating her insulin dosages and blood sugar levels, but the doctor indicated she only needed "some minor adjustments," and she was "doing quite well taking care of her own insulin." (A.R. 356) Stelzl's weight was 158 pounds at this time. (*Id.*)

On August 24, 2004, Stelzl saw Internal Medicine specialist Robert Pelz, M.D. "for a travel consult in preparation for a trip to Costa Rica that she will be taking with her father." (A.R. 265) During the eight-day trip, Stelzl and her father planned to stay "in first class Western style resorts." (*Id.*) Stelzl and her mother indicated that Stelzl had taken a trip to Turkey in 1996, and Stelzl had gotten some vaccinations beforehand. Although Dr. Pelz saw no need for a typhoid vaccination, Stelzl wanted one anyway, so the doctor administered an oral vaccine, as well as a tetanus shot. The doctor also recommended a vaccination for Hepatitis, but this was delayed until Stelzl could obtain her medical records to determine whether she had already been vaccinated for Hepatitis. She received a prescription "for Chloroquine for malaria prophylaxis and Cipro to take [as needed] for traveler's diarrhea." (*Id.*) She was advised to use insect repellant. (*Id.*)

Stelzl saw Dr. Gordon on September 13, 2004, for followup. She was taking Prozac 20 mg. daily, with no adverse effects. Stelzl reported feeling "extremely well," and she was "quite excited about friendships made through the autism group in town, including going to an autism retreat in August 2004." (A.R. 300) Her work and family relations were going well, and Stelzl planned to sign up for a computer class. The doctor noted Stelzl was "[n]ot yet receiving state assistance for problems related to Asperger's disorder." (*Id.*) The Prozac was continued without change, and Stelzl was directed to return in six months for followup. (*Id.*)

On September 18, 2004, Stelzl saw P.A. Nelson for followup of her diabetes. Stelzl's diabetes was under poor control, and she was noted to have "severe hypoglycemic unawareness." (A.R. 358) She

was instructed in the use of a new glucose meter, and her insulin-to-carbohydrate ratio was changed in hopes this would reduce her blood sugars somewhat. (*Id.*)

Stelzl saw P.A. Nelson on September 30, 2004, "with a chief complaint of poorly controlled blood sugars." (A.R. 360) Stelzl's current weight was 162 pounds. She reported significant fluctuations in her blood sugars over the previous week, accompanied by fatigue. A lab test revealed that she had a urinary tract infection, which was diagnosed as the cause of her hyperglycemia. Antibiotics were prescribed. (*Id.*)

Stelzl saw Dr. Gordon on March 31, 2005, for followup. Stelzl was still taking Prozac 20 mg. daily. Stelzl had been living with her boyfriend for seven months, and he accompanied her to this visit. Dr. Gordon noted Stelzl was comfortable with her boyfriend in the room, and seemed to appreciate his being there. Stelzl's boyfriend "said that when [Stelzl] first started Prozac, he noticed her speech was more pressured, [and] she seemed more hyperactive. There are times now when she will become 'obsessive making crafts, she will have no time for anything else and will stay up later doing them.'" (A.R. 299) Stelzl stated she was sleeping well. Stressors included her mother's recent diagnosis with breast cancer, and her grandmother's terminal illness. Stelzl still "had the same job that she had before." (*Id.*) Dr. Gordon noted Stelzl seemed "slightly more dysphoric, with non-pressured, normal rate of speech, [and] fair eye contact." (*Id.*) Stelzl appeared "more tired," but her thought processes were "logical, goal directed, [and] coherent." (*Id.*) Dr. Gordon noted Stelzl could be experiencing grief regarding her mother's and grandmother's health conditions, causing some "mood

cycling and/or some obsessive features." (*Id.*) Stelzl's blood sugar had been fluctuating more, and she was encouraged to see Dr. Cirullo regarding her diabetes control. Dr. Gordon increased the Prozac dosage to 30 mg. daily, and directed Stelzl to return in three weeks for followup, or sooner if needed. (*Id.*)

On April 12, 2005, Stelzl saw P.A. Nelson for followup of her poorly controlled blood sugars. Her current weight was 172 pounds. She reported continued wide fluctuations in her blood sugars. Stelzl's boyfriend, who accompanied her to the visit, inquired about the possibility of an insulin pump for Stelzl, but P.A. Nelson indicated he was "not sure that [Stelzl] has the skills at this point to be successful with a pump." (A.R. 362) Stelzl's medications were adjusted, and she was directed to advise the doctor's office of her blood sugars in one week, and follow up in one month. (A.R. 362-63)

On April 21, 2005, Stelzl saw Dr. Gordon for followup. Stelzl reported improved energy and mood, and no sleep disturbances. The doctor noted Stelzl had improved eye contact, and did not appear as fatigued. Dr. Gordon indicated Stelzl's depression had "improved with medication increase." (A.R. 298) She directed Stelzl to return in three months for followup.

Stelzl saw Dr. Gordon on July 11, 2005, for followup. She was taking Prozac 30 mg. daily. She complained of fatigue for the previous three weeks, but she was still doing all of her activities. She was sleeping seven hours a night, but would wake up feeling tired. Stelzl reported that she was looking for a job to fill her time; she currently was working twelve hours a week, and was doing

some crafting with a friend. Stelzl was continued on the Prozac. She was directed to return in three months for followup. (A.R. 297)

On August 2, 2005, Stelzl saw P.A. Nelson for followup of her fluctuating blood sugars, progressive weight gain (her current weight was 179 pounds), and abdominal pain. (A.R. 364) Records indicated Stelzl had gained 27 pounds during the previous year. P.A. Nelson opined Stelzl was simply overeating. In addition, Stelzl had not been exercising, so she was not "burning up additional calories." (A.R. 365) P.A. Nelson directed Stelzl "to cut down on her food," and "reinitiate her exercise plan." (*Id.*) He referred her to Dr. Darroca for evaluation of her abdominal pain. (*Id.*)

Stelzl returned to see P.A. Nelson on August 11, 2005. She had been exercising, "working in her yard pretty much every day," and watching her diet. Her weight was down two pounds from her previous visit, and her blood sugars were more on target. (A.R. 366)

Stelzl saw dietician Julie C. Scalisi on October 5, 2005, for followup and counseling. Stelzl was instructed in being more accurate in carbohydrate counting, using a food scale, and recording her blood sugar values. Stelzl was asked to bring in her log sheet and food record at her next visit. (A.R. 315)

On October 11, 2005, Stelzl saw P.A. Nelson for "evaluation of a severe hypoglycemic episode." (A.R. 367) Within 45 minutes of waking up and taking her insulin, Stelzl's blood sugar had plummeted to 23, and she had become "unaware of her surroundings." (*Id.*) P.A. Nelson suspected that Stelzl had inadvertently switched her medications, taking too much of one and not enough of the other.

He advised Stelzl to "be especially cautious about drawing up her insulin." (*Id.*)

Stelzl saw Dr. Darroca on October 21, 2005, for followup of her type I diabetes. Stelzl was counseled regarding hypoglycemia, diet, blood sugar monitoring, and carbohydrate consumption. In addition, Stelzl apparently had been taking Crestor for hyperlipidemia, and had developed reactions including extreme fatigue and myalgias. She reported that when she stopped taking the Crestor, her symptoms resolved. She was directed to follow up with Dr. Cirullo regarding further treatment. (A.R. 316-17)

On October 25, 2005, Stelzl saw dietician Scalisi for followup and counseling. Stelzl was having "frequent and significant hypoglycemia." (A.R. 263) Her insulin dosage was changed, and Stelzl was counseled regarding dosages and carbohydrate intake prior to exercise. (A.R. 264, 318)

Stelzl saw Dr. Gordon on November 1, 2005. She reported her mood as generally good, with no significant anxiety. She was sleeping well. Her appetite was good, but she had gained ten pounds. She was not getting much exercise, and her energy level was low. She had recently separated from her boyfriend, noting they had been together for one year. Notes indicate Stelzl had been assigned to a different psychiatrist, but she chose to return to see Dr. Gordon instead. Another doctor (a Dr. Salvador) had discontinued Prozac, and started Stelzl on Celexa 20 mg. daily, and Wellbutrin. Dr. Gordon did not make any changes in Stelzl's medications at this time. (A.R. 296)

On November 30, 2005, Stelzl saw Scalisi for followup and counseling regarding diet, nutrition, exercise, and insulin dosages.

(A.R. 261-62) Stelzl was having fewer episodes of hypoglycemia, although Scalisi indicated the episodes were "still too frequent." (A.R. 261)

Stelzl saw P.A. Nelson for followup on December 15, 2005. Her dyslipidemia medication had been switched from Pravachol to Crestor, but Stelzl had developed severe abdominal pain due to the Crestor. It was stopped, and she had "not had any statin drugs for at least the last six to eight weeks." (A.R. 370) Her current weight was 176 pounds. Notes indicate her blood sugars still were not adequately controlled, although her hypoglycemic episodes had reduced in severity and frequency. P.A. Nelson advised Stelzl to keep a food log, writing down what she had eaten when she had a high blood sugar level. He restarted Stelzl on Pravachol. (*Id.*)

Stelzl saw Dr. Gordon on February 7, 2006. At that time, Stelzl was taking Celexa 20 mg. daily, and Klonopin .5 mg as needed for "leg twitches." Wellbutrin had been discontinued two months earlier. Stelzl reported poor sleep, waking up tired, and staying in bed more. She was getting some exercise on a treadmill. Her affect was noted to be flat, serious, and slow moving. She denied anxiety. Dr. Gordon suggested decreasing the Celexa to 10 mg. daily because the medication might be causing weight gain and lethargy. Stelzl agreed to try the lower dosage. (A.R. 295)

Stelzl returned for followup on March 7, 2006, and reported no significant difference on the lower Celexa dosage. She was sleeping well, but having some daytime fatigue and reduced energy. She was bowling for fun. She had a temporary roommate. Her blood sugar had been "a little high," in the 300-400 range. The doctor advised Stelzl to see a dietician, and follow up in one month with her

primary care physician. They discussed the possibility of tapering off the Celexa. (A.R. 294)

On March 27, 2006, Stelzl returned to see P.A. Nelson for followup of dyslipidemia and diabetes. Stelzl's blood sugar logs indicated she was over-correcting for hyperglycemia, resulting in episodes of hypoglycemia. She was counseled on proper correction, and her insulin dosage was adjusted. (A.R. 372)

On April 4, 2006, Stelzl saw Dr. Gordon for followup. Stelzl had reduced her coffee intake from four cups to one cup daily, and stated she felt she was "[b]ack to [her] old self more," with more energy. (A.R. 293) She was doing well on Celexa. The doctor directed her to return in three months for followup. (*Id.*)

Stelzl saw P.A. Nelson on April 24, 2006, for followup of her diabetes. Her current weight was 180 pounds. Her blood sugars continued to be widely variable, without an identifiable pattern. Her insulin dosages were adjusted. (A.R. 373) Her blood sugars continued to be uncontrolled on July 27, 2006. P.A. Nelson determined that Stelzl was not logging her snacks and desserts, particularly at night. Her current weight was 183.6 pounds. P.A. Nelson prescribed a trial of a different insulin, although he suspected most of Stelzl's problems were due to "dietary difficulties as well as eating and not taking additional insulin." (A.R. 374) Stelzl was directed to keep a log of all of her food intake and insulin for two weeks. (*Id.*)

Stelzl saw Dr. Gordon on August 1, 2006, reporting no new changes. Her mood was steady without extremes. Her sleep and appetite were good. She was doing scrapbooking for pleasure, and was looking into some "office work classes" at Lane Community

College. (A.R. 292) She made good eye contact and was relaxed, although her affect was slightly "blunted." (*Id.*) Dr. Gordon believed Stelzl was benefitting from her medications, and from her quarterly visits with the doctor, which helped Stelzl assess and identify short and long-term personal goals, and gave her support and encouragement. Stelzl was directed to return in three months for followup. (*Id.*)

Stelzl saw P.A. Nelson on August 17, 2006. Her blood sugars had been "extremely poorly controlled" after switching her insulin. She was returned to her previous insulin. Stelzl's mother was with her, and they discussed the possibility of an insulin pump with P.A. Nelson, agreeing that with Stelzl's autism, "a pump would not be the best option." (A.R. 375) Stelzl expressed frustration with her inability to control her blood sugars, and P.A. Nelson told her "about new technologies which should be available within the next few years for easier treatment of type I diabetes." (*Id.*)

Stelzl saw P.A. Nelson for followup on September 14, 2006. Notes indicate Stelzl was "trying very hard" to follow the dietician's recommendations, including eating a 1500-calorie-a-day diet and no snacks. Stelzl also had started walking recently. Her blood sugar control had "improved dramatically." (A.R. 376) Her weight at this time was 183.4 pounds. (*Id.*) On October 12, 2006, notes indicate Stelzl was "falling back into her old habits of snacking and not having insulin for this." (A.R. 377) Stelzl was walking on a treadmill regularly in the evenings. Her current weight was 182.2 pounds. P.A. Nelson reminded her to pay close attention to her diet and insulin dosing. (*Id.*)

On November 2, 2006, Stelzl saw Dr. Gordon for followup. Stelzl was taking Celexa, with no reported side effects. She reported "feeling quite well, proactively fighting off depression by movement/socializing." (A.R. 291) She was participating in yoga, bowling, stamping, Asperger's group meetings, and work. She was feeling well physically, and her blood sugars were "stabilized." (*Id.*) Dr. Gordon observed that Stelzl looked "less stressed." (*Id.*) She made good eye contact, and her affect was brighter. Stelzl's diagnosis was Depression NOS, "well controlled [with] active [treatment]." (*Id.*) She was directed to return in three months for followup. (*Id.*)

Stelzl returned to see P.A. Nelson on January 4, 2007. She reported eating quite a bit more over the holidays, and snacking between meals without taking additional insulin. As a result, her blood sugars had been poorly controlled. Her current weight was 181 pounds. P.A. Nelson noted that when Stelzl paid attention to her diet and insulin dosing, her glycemic control was excellent, but "[u]nfortunately, she frequently continue[d] to graze and snack between meals without insulin," which he noted would cause "wide fluctuations and significant hyperglycemia." (A.R. 378) He adjusted Stelzl's insulin dosages and ordered lab tests. (*Id.*)

On January 5, 2007, Stelzl saw Physical Therapist John Hamburg for "chief complaints of intermittent headaches at frontal, temporal, and parietal areas without known provocation except noise[.]" (A.R. 419; *see* A.R. 429-41) Stelzl's "referring diagnosis" was "[t]horacic and paracervical strains with tension headaches," with an onset date of August 1, 2006. (*Id.*) Her physical therapy goals were to reduce the intensity of her headaches by 50%, and improve

relaxation of the muscles of her upper cervical spine. She was treated with "[g]entle cervical and occipital mobilization," and related manipulations and flexibility exercises. (*Id.*) Stelzl was seen twice more, and was discharged from physical therapy on January 31, 2007. She reported "good relief of neck pain and headaches," with "full and comfortable" range of motion in her cervical and thoracic spine. (A.R. 417)

Stelzl saw Dr. Gordon on February 1, 2007, for followup. Stelzl reported good sleep and appetite. Her energy level was "moderate." She was still working, and was "socializing regularly." (A.R. 290) Stelzl had no physical complaints, no mood extremes, and minimal anxiety, and she stated, "I feel great." (*Id.*) She was encouraged to get more exercise, and to return in six months for followup, or as needed. (*Id.*)

On April 3, 2007, Stelzl saw P.A. Nelson for followup. Stelzl was improving in her "carb recognition skills" and insulin management. Stelzl had not been exercising, but still had lost weight due to better diet control, with her current weight at 174 pounds. P.A. Nelson estimated that about 50% of Stelzl's blood sugars were "at least close to target." (A.R. 379) Stelzl committed to walking for thirty minutes, five days a week, after dinner. (*Id.*)

Stelzl saw P.A. Nelson on August 14, 2007. Her blood sugars continued to be quite variable, despite adhering to an insulin-to-carb ratio prescribed by the dietician. Her current weight was 177.4 pounds. P.A. Nelson adjusted Stelzl's insulin dosing schedule, and advised Stelzl to follow up with the dietician. (A.R. 380) On November 6, 2007, when she saw P.A. Nelson again, her weight was down slightly, to 176 pounds. Stelzl was walking on a

treadmill for 20 to 30 minutes, "most days of the week." (A.R. 381) Stelzl's mother accompanied her, and stated she had been helping her daughter maintain the recommended insulin-to-carb ratio. P.A. Nelson opined that Stelzl's exercise now was "causing some nocturnal hypoglycemia," and he adjusted her insulin dosing schedule. He commended Stelzl on her improved blood sugars and commitment to exercise. (*Id.*)

On December 18, 2007, Stelzl saw Neurologist Sherrie A. Rawlins, M.D. for consultation regarding possible sleep apnea. Stelzl stated she did not feel rested upon awakening in the morning, and she was experiencing daytime fatigue and weight gain. Her current weight was 178.3 pounds. Her mother recently had shared a hotel room with Stelzl, and reported that her snoring was so loud, the mother was unable to sleep. Stelzl also reported some restless leg syndrome ("RLS") symptoms, and noted other family members (mother, aunt, cousins) also had RLS. Stelzl had tried Neurontin for the RLS symptoms in the past, without results. Stelzl also reported a history of migraine headaches, but stated these were not bothering her currently. The doctor scheduled Stelzl for a diagnostic polysomnogram to evaluate her for a CPAP, with a repeat test to be scheduled after she started the CPAP. Dr. Rawlins advised that RLS often is associated with low iron levels, so a blood test was ordered to check Stelzl's iron level. (A.R. 257-60)

Stelzl underwent a full polysomnogram (sleep study) on December 28, 2007. The test revealed "evidence of mild obstructive sleep disordered breathing," primarily during REM sleep. (A.R. 411) In addition, Stelzl exhibited "prominent and excessive leg movements,"

for which "a low-dose dopamine agonist" was recommended. (*Id.*) Stelzl was scheduled for a repeat study with a CPAP. (*Id.*)

On January 8, 2008, Stelzl saw Scalisi for followup and nutrition counseling. (A.R. 255-56) Stelzl's blood sugars during the previous week varied from 80 to 333 at various times of the day. Her weight was down a pound-and-a-half. Stelzl's goal was to "increase her activity level again." (A.R. 256) The dietician reviewed Stelzl's "correction scale" for insulin dosage. (*Id.*)

Stelzl underwent a polysomnogram with CPAP on January 25, 2008. (A.R. 408-09) The test revealed "evidence of obstructive sleep disorder breathing, which improve[d] with positive airway pressure." (A.R. 409) A CPAP was prescribed. (*Id.*)

Stelzl saw P.A. Nelson on February 5, 2008. Her current weight was 174 pounds. Her recent sleep apnea diagnosis had motivated her to work on losing more weight. Her blood sugars had improved significantly with her reduced caloric intake. She was instructed on how to adjust her insulin dosing as necessary as she lost weight. (A.R. 382)

On February 9, 2008, Stelzl was seen in the emergency room with a complaint of two days of abdominal pain, with bloating and diarrhea. Lab tests and a CT scan showed appendicitis. Stelzl was admitted into the hospital, and an appendectomy was performed the same day. (A.R. 396-407)

On March 25, 2008, Stelzl saw Dr. Rawlins for followup. (A.R. 251-54) Her current weight was 175 pounds. Stelzl reported feeling "dramatically better with the CPAP." She was sleeping much better, had more energy during the day, no longer needed naps, was less "grumpy," had lost a little weight, and was "much more efficient at

work and . . . not struggling to stay awake." (A.R. 252) Stelzl still had some intermittent RLS symptoms, but they were not keeping her awake at night, and she did not want to take another medication for this problem. The doctor recommended an iron supplement based on Stelzl's test results, and Stelzl planned to discuss this with her primary care physician. (A.R. 254)

Stelzl saw P.A. Nelson on April 29, 2008. Her current weight was 175 pounds. She reported several recent episodes of hypoglycemia in the early morning hours, and P.A. Nelson adjusted her dosing schedule. (A.R. 383)

On May 6, 2008, Stelzl saw Scalisi for followup. Stelzl had lost four pounds since January 2008, and was "working on controlling her portion sizes and slightly increasing her activity." (A.R. 250) She was doing some bowling, and had a plan to reduce her insulin prior to planned exercise. She was following her insulin and diet plan well, and "was encouraged to just continue with her same plan and follow up for support[.]" (*Id.*)

On May 12, 2008, Stelzl saw Dr. Rawlins for followup. (A.R. 246) Notes indicate Stelzl had received very good results from an "AutoSet CPAP" trial. She was sleeping at least seven hours a night, and her daytime fatigue had resolved. Mild RLS symptoms also had resolved. (*Id.*)

On August 21, 2008, Stelzl saw Dr. Gordon for followup.[4] Stelzl had lost about ten pounds, and planned to lose more weight. She noted her headaches and daytime sleepiness were better since she had started using a CPAP. She reported that her "mood has been

[4]The last note prior to this one was dated eighteen months earlier, on February 1, 2007. (*See* A.R. 290)

generally good, still working 12 hours weekly, sees a movie once a week with a [girlfriend], [planned] to attend Autism Camp later this month, [and] still enjoys scrap-booking regularly." (A.R. 289) Notes indicate Stelzl was seeing "counselor Nan Lester" weekly, and Stelzl indicated the counselor was helping her find "good people to hang out with." (*Id.*) Stelzl had been taking Celexa for several years, and Dr. Gordon suggested tapering off the medication to see how Stelzl responded without it. Stelzl indicated she had "been doing well for two years" with regard to her depression, and she agreed to taper off of the Celexa. (*Id.*)

Stelzl saw Dr. Gordon for followup on October 9, 2008. Stelzl had tapered off Celexa without difficulty, noting no changes in her sleep, energy, appetite, or mood. (A.R. 288) Stelzl complained of some fatigue, but thought this could be related to a low Vitamin D level, and noted she was receiving Vitamin D shots. Stelzl was doing well overall. She was working part time, and participating in "crafting" and "bowling." (*Id.*) The doctor noted that no medications were indicated at this time. (*Id.*)

Stelzl saw P.A. Nelson on November 6, 2008. Her current weight was 176.6 pounds. Her blood sugars continued to vary widely. P.A. Nelson adjusted her insulin dosing schedule, and discussed when to have protein snacks and other snacks. (A.R. 384)

On December 18, 2008, Physical Medicine and Rehabilitation specialist Martin Kehrli, M.D. reviewed the record and completed a Physical Residual Functional Capacity Assessment form regarding Stelzl. (A.R. 442-49) He found that a review of all of the medical evidence "clearly show[ed]" Stelzl did not have any "physical impairment that meets or equals a listing level for severity."

(A.R. 449) He noted Stelzl worked part time, lived alone, was independent in all of her activities of daily living; and cleaned, cooked, and shopped on her own. (A.R. 447) He found no limitations in Stelzl's ability to perform work-related activities. (A.R. 442-49)

On December 19, 2008, clinical psychologist Bill Hennings, Ph.D. reviewed the record and completed a Psychiatric Review Technique form (A.R. 450-63), and a Mental Residual Functional Capacity Assessment form (A.R. 464-67) regarding Stelzl. He evaluated Stelzl under Listing 12.04 - Affective Disorders ("Depression"), and Listing 12.10 - Autistic Disorder ("Asperger's disorder"). (A.R. 450, 453, 459) Dr. Hennings opined Stelzl would have mild limitations in her activities of daily living, and in maintaining concentration, persistence, or pace; and moderate limitations in her ability to maintain social functioning. (A.R. 460) In his notes, Dr. Hennings indicated the record contains "no evidence to suggest that [Stelzl] is psychologically incapable of sustaining simple, routine tasks." (A.R. 462) On the more specific Mental RFC form, Dr. Hennings indicated Stelzl would have moderate limitations in her ability to understand, remember, and carry out detailed instructions; interact appropriately with the general public; maintain socially appropriate behavior, and adhere to basic standards of neatness and cleanliness; and set realistic goals or make plans independently of others. He opined she would not be limited significantly in any other way due to her mental impairments. (A.R. 464-66)

On January 6, 2009, Stelzl saw Scalisi for a review of her blood sugars and for "Diabetes Education." (A.R. 473-74) Notes

indicate Stelzl had developed a "good understanding of carbohydrate counting," and insulin dosing in connection with physical activity. (A.R. 473) Her weight was up to 181 pounds, and Stelzl indicated she would get back to using her treadmill in the evenings. (A.R. 474)

Stelzl saw P.A. Nelson on January 15, 2009. Stelzl had started exercising more regularly, and her blood sugars were "markedly improved" with a recent medication change. An additional medication was added to her regimen to increase control of her blood sugars. (A.R. 476)

On January 25, 2009, Stelzl and her mother had an introductory session with counselor Lola Broomberg, M.S. Broomberg noted Stelzl used jerky language, showed "little facial affect," and her speech was rambling and unfocused. (A.R. 513) Stelzl's intellectual functioning and judgment were impaired, and her thought content was circular. Broomberg noted Stelzl had a low level of functioning. Stelzl's mother indicated her daughter repeatedly had made "unsafe relational and personal decisions." (*Id.*) Stelzl indicated she was "interested in being independent," but Broomberg noted, "She may not be able to be as independent as she would like and may not understand possible limitations." (*Id.*)

Stelzl saw counselor Broomberg on February 5, 2009. Stelzl's conversation was "halting," and she appeared "shy and uncertain of the direction that she wants her treatment to take." (A.R. 514) Her thought content was "simple and repetitive," and she exhibited "[s]ome compulsive thinking." (*Id.*) Broomberg noted Stelzl sometimes had to be interrupted to break her circular attention pattern. (*Id.*)

On February 10, 2009, Stelzl saw Dr. Gordon for followup. Stelzl reported "recently increased sleep, anergia, low motivation to pursue interests, dysphoria including recent [symptoms] of 'wanting to jump off roo[f], sit in car with gas on . . . no reason to live, just want to die'." (A.R. 488) Stelzl indicated these symptoms of depression had been more intense over the last few months. Physically, her blood sugars were very good, and she was walking regularly. Under "Recent stressor," the doctor noted: 'economy and 'job on the line', believes she may be laid off soon, considering returning to school to become dental hygienist, 'new X-BF'." (*Id.*) Dr. Gordon noted Stelzl appeared pleasant, articulate, and well groomed. She expressed herself logically, and her thought processes were coherent. The doctor opined Stelzl's recent depression was due to upset from breaking up with her boyfriend. She prescribed Lexapro 10 mg. daily. (*Id.*)

Stelzl saw counselor Broomberg on February 13, 2009. Stelzl described her current status as "[f]earful, anxious and depressed," and Broomberg noted Stelzl "appear[ed] anxious about her life and her relationships," and "about cleanliness and germs . . .[and] future independence." (A.R. 515) Stelzl lacked focus about her career path, and was concerned that she could not take care of herself financially. Her speech was "[f]lat, jerky and repetitive," and she seemed "unable to distinguish between possible career paths and what is and is not possible for her." (A.R. 515-16)

On February 27, 2009, Stelzl saw counselor Broomberg again. Stelzl was reluctant to rejoin her bowling team because she feared 'running into ex-partners." (A.R. 516) Her affect was flat, and her thought content was "repetitive and obsessive." (*Id.*)

Stelzl saw Dr. Gordon on March 3, 2009, and reported feeling much better on the Lexapro. She had plans to enroll at Lane Community College for the spring term. Her affect was "[s]lightly brighter," and she reported feeling more energetic. (A.R. 488)

Stelzl saw counselor Broomberg on March 13, 2009. Her level of functioning was unchanged, and she reported being slightly depressed. Her affect and speech mode were flat. (A.R. 517-18) Stelzl was more relaxed at her next session, on April 7, 2009. Her affect was neutral, but she was more present in the conversation. (A.R. 518-19)

On April 15, 2009, psychologist Joshua J. Boyd, Psy.D. reviewed the record and completed a Mental Summary in connection with Stelzl's request for reconsideration. He noted Stelzl had described her activities of daily living "as quite active, well rounded and intact." (A.R. 477) He found Stelzl had "remained very stable mentally"; was able to sustain social activities and friendships; and although she was not working at the substantial gainful activity level, she had been "able to sustain work activity." (*Id.*) He affirmed the December 2008 Mental RFC. (*Id.*)

On April 17, 2009, Sharon B. Eder, M.D. reviewed the record and completed a Physical Summary. She noted Stelzl was working part time as a file clerk. She indicated Stelzl had "long standing diabetes with variable control, but no signs of end organ damage . . . neuropathy, etc." (A.R. 478) She found Stelzl's diabetes would cause some reduction in Stelzl's residual functional capacity, but she affirmed the December 2008 Physical RFC. (*Id.*)

Stelzl saw counselor Broomberg on April 21, May 4, June 3, and June 18, 2009. She continued to be anxious about her finances and

career possibilities, and how she could create an independent life for herself. She also continued to be reluctant to engage in social interactions. However, her affect and level of functioning improved somewhat during this period of time. (A.R. 519-23)

Stelzl saw Dr. Gordon on June 23, 2009. She reported "feeling generally well with good sleep, appetite and energy level." (A.R. 487) She had no physical complaints, had lost some weight, and stated her diabetes was well controlled. Stelzl indicated she was "looking into possible vocations," and had visited the community college's career center, but her "family members' opinions about what work she is best suited for both help[ed] and hinder[ed] her process." (*Id.*) Dr. Gordon suggested Stelzl take her mother with her to talk with a career counselor at the community college. (*Id.*)

Stelzl saw counselor Broomberg on July 7, 2009. Stelzl had exacerbated anxiety due to personal relationships with two men, and "[c]oncern about independence and traveling to be with family in Montana later in the summer." (A.R. 523) Her affect was "neutral and flat," and her intellectual functioning was "fair." (*Id.*)

Stelzl returned to see Dr. Gordon on July 14, 2009. Stelzl had begun working with Nan Lester, an Asperger's therapist who also acted as an "educational advisor" and "disability advocate" on behalf of individuals with autism and Asperger's syndrome. (*See* A.R. 489) Stelzl also was seeing Broomberg every three weeks. Stelzl indicated her mood had been good, and she reported no physical concerns or complaints. (A.R. 486)

Stelzl saw counselor Broomberg on July 29, August 26, and September 9, 2009. Stelzl's mental status was variable. At times,

she was anxious about interpersonal relationships, and her ability to live independently and care for herself. At other times, she appeared happy, stable, and content. (A.R. 524-26)

On October 13, 2009, Stelzl saw Dr. Gordon for followup. Stelzl reported good sleep, appetite, energy, and mood. She was not socializing much, and still was working twelve hours per week at the same job. Stelzl had been to a workshop at the community college, and had received job recommendations including "proof reading, movie critic, census bureau, voter registration office, cooking prep." (A.R. 485) She was still working with Broomberg every week or two. Dr. Gordon noted Stelzl was "[s]table appearing and benefitting from medication." (*Id.*)

Stelzl saw counselor Broomberg on October 21, 2009. Stelzl was anxious and overwhelmed, with "[s]lightly impaired" intellectual functioning. (A.R. 527) On November 4, 2009, she was "[e]xtremely anxious," with thought content that was "driven by anxiety, [and] not grounded in realistic steps toward goal setting or planning." (A.R. 528) Stelzl remained anxious on December 6, 2009, but also was excited about the upcoming holidays. (A.R. 528-29)

Stelzl saw Dr. Gordon on January 11, 2010. She reported a lower energy level and more lethargy. Her mood had been more depressed for a few weeks, but not severely. Stelzl was attending church regularly, and had been in a Christmas play. She was still doing part-time office work, and was not seeking other employment at this time. She was still seeing Broomberg, and stated she found this "quite useful in helping her organize her activities and think about relationships." (A.R. 484) Dr. Gordon noted Stelzl's affect was "slightly flat and constricted," and she was "[a] little less

jocular today but with some appropriate smiles." (*Id.*) She opined Stelzl likely was struggling with mild Seasonal Affective Disorder. She increased Stelzl's Lexapro to 20 mg. daily, and encouraged Stelzl to get out and exercise. (*Id.*)

On January 15, 2010, Stelzl returned to see counselor Broomberg. Stelzl stated she was "[h]appy and mellow," and Broomberg assessed Stelzl as "stable." (A.R. 529-30)

On February 9, 2010, Dr. Gordon wrote an opinion letter regarding Stelzl's mental RFC. She indicated "Stelzl meets DSMIV criteria for Mood Disorder Not Otherwise Specified, and Pervasive Developmental Disorder Not Otherwise Specified." (A.R. 483) Dr. Gordon stated she had worked with Stelzl intermittently for about six years. She indicated, "[I]t is clear to me [Stelzl] is not able to obtain further employment or pursue vocational training at this time in part due to the above diagnostic problems she struggles with." (*Id.*) Dr. Gordon noted that Nan Lester in her office, who is a Pervasive Developmental Disorder Specialist, had been working with Stelzl "in seeking disability services," and Lester would be "in a much better position" than Dr. Gordon for purposes of providing an estimate of Stelzl's mental RFC. (*Id.*)

Stelzl saw counselor Broomberg on February 11, 2010. She had a flat affect and "slightly impaired" intellectual functioning, although Stelzl described herself as "Fine." (A.R. 530)

On February 25, 2010, therapist Nan Lester wrote an opinion letter to the state agency, in which she opined that Stelzl needs "continuous treatment, and SSDI." (A.R. 489) Lester stated Stelzl has an "extremely limited ability to perceive the intentions and motivations of others, and therefore to respond accordingly as

others capable of protecting themselves are." (A.R. 489-90) Lester further stated:

> In my observation, despite unrelenting efforts on both my, her Mother, and my associates part, we have witnessed nothing but a continuation, if not always an escalation of, [Stelzl's] destructive, mal-adaptive, and dangerous behaviors, as well as the "avoidant, blaming, and shutdown" afterward.
>
> It is my considered opinion that [Stelzl] will not likely survive access to a safe, meaningful life, with all the dignity and resources she deserves, with[out] first obtaining SSDI, and the supervising professional expertise that disburses the much needed funding.

(A.R. 490)

Lester completed a Mental RFC form, opining that Stelzl has moderate limitations in her ability to remember locations and work-like procedures; understand and remember short, simple instructions; perform activities within a schedule, maintain regular attendance, and be punctual within customary tolerances; interact with the general public; ask simple questions and request assistance; maintain socially appropriate behavior and adhere to basic standards of neatness and cleanliness; and respond appropriately to changes in the work setting. She opined Stelzl has moderately severe limitations in her ability to understand and remember detailed instructions; cary out very short and simple instructions; sustain an ordinary routine without special supervision; work in coordination with or proximity to others without being distracted by them; make simple work-related decisions; get along with coworkers or peers without distracting them or exhibiting behavioral extremes; be aware of normal hazards and take appropriate precautions; and travel in unfamiliar places or use public transportation. She

opined Stelzl has severe limitations in her ability to carry out detailed instructions; maintain attention and concentration for extended periods; complete a normal work day and work week without interruptions from psychologically-based symptoms, and perform at a consistent pace without an unreasonable number and length of rest periods; accept instructions and respond appropriately to criticism from supervisors; and set realistic goals or make plans independently of others. (A.R. 492-94)

In her comments, Lester indicated that although Stelzl does not meet "the cognitive verbal or performance requirements for Axis II Mental Retardation," she nevertheless experiences severe deficits in the areas of functioning related to organization, multi-tasking, retention, perceiving consequences, projecting outcomes, and the like. (A.R. 494) She further indicated Stelzl is severely limited in the area of "social cognition." (A.R. 494-95) Lester indicated that despite years of therapy, both individually and in a group setting, Stelzl remains "impaired to a degree where her risk factors far outweigh any capacity to function independently." (A.R. 495)[5]

Stelzl saw counselor Broomberg on February 28, 2010. Stelzl was considering starting a business and was "[g]etting [o]rganized." (A.R. 531)

[5]Accompanying Lester's opinion letter and mental RFC form is a statement from "Christopher Hawke, B.S., C.R.P.," of "Asperger Counseling N.W.," offering his observations of Stelzl during an autism support group she attended. (*See* A.R. 496-97) The record contains nothing about Hawke's qualifications, or any personal interactions he may have had with Stelzl, and "Asperger Counseling N.W." does not appear to be a functioning organization presently. The ALJ did not discuss Hawke's observations, and the parties have not referenced his opinions in their briefs. Similarly, the court will not credit Hawke's observations in this review.

On April 1, 2010, Stelzl underwent a neuropsychological evaluation by William A. McConochie, Ph.D., on referral from the state agency. (A.R. 501-12) Stelzl drove herself to the appointment. She was noted to be friendly, cooperative, and appropriately dressed and groomed. Her evaluation results were considered reliable and valid. (A.R. 502) In discussing her history with Dr. McConochie, Stelzl indicated she thought "she might be able to work as a nursing home assistant at present and up to 40 hours per week," as long as the job was "not too complicated," and did not require heavy lifting. (A.R. 503) Testing administered by an intern in the doctor's office showed Stelzl has a full-scale IQ of 80, and functions "in the mid-average range in verbal intelligence," but her processing speed is "in the borderline range [which] could be expected to limit her ability in jobs such as she has held as a file clerk and doing odd jobs in a nursing home." (A.R. 505-06) Her memory functioning was in the average range. She was notably slow at visual attention and task switching, and "was confused when told to place her left hand to her left elbow, not seeming to understand that this was an impossible task." (A.R. 506) Based on his evaluation, Dr. McConochie opined Stelzl has no clinical Axis I diagnosis. He noted, "While she has a history of Aspergers syndrome and depression, she does not seem to have clear and debilitating symptoms of these syndromes at present. Her medications seem to help adequately, as with depression." (*Id.*) He further stated Stelzl's "primary psychological limitations to work activity are a combination of various areas of difficulty, none of which rises to the level of a clinical syndrome, in the present examiner's opinion." (A.R. 507-08)

Regarding Stelzl's mental functional work-related abilities, Dr. McConochie opined she would be mildly limited in her ability to carry out simple instructions, make judgments on simple work-related decisions, and interact appropriately with supervisors and co-workers. He opined she would be moderately limited in her ability to understand, remember, and carry out complex instructions; interact appropriately with the public; and respond appropriately to usual work situations and to changes in a routine work setting. (A.R. 510-11) The doctor indicated Stelzl's "[o]verall ability to support herself has been marginal." (A.R. 511) She is dependent on her family and local charities for subsistence. (A.R. 507, 511) Dr. McConochie opined that Stelzl's limitations likely originated in childhood, and are "probably congenital in nature," such that there is a poor prognosis for any change in her limitations. (A.R. 508, 511) He indicated she "would need assistance managing significant amounts of income." (A.R. 508)[6]

On April 10, 2010, Stelzl saw counselor Broomberg. Stelzl had started her own business as an in-home care provider, and she was happy and excited about this. However, Broomberg felt Stelzl

[6]Dr. McConochie's recitation of the background "Referral information" regarding Stelzl contains several inaccuracies. (*See* A.R. 501-02) For example, he indicates Nan Lester's report is "dated October 25, 2010" (which is six months *after* Dr. McConochie's evaluation), when the report actually is dated February 25, 2010. He stated Stelzl's treatment notes indicated Dr. Gordon had "recommended a job possibly as a proofreader, movie critic, Census bureau worker or a worker as a clerk in a voter registration office." (A.R. 501) These job recommendations were not made by Dr. Gordon; rather, Stelzl reported to Dr. Gordon that those jobs had been mentioned as possibilities by someone at a community college workshop. (*See* A.R. 499) Stelzl's mother noted additional inaccuracies in her hearing testimony. (*See* A.R. 57-60) However, the court finds, as did the ALJ, that these inaccuracies had no impact on Dr. McConochie's findings.

"seem[ed] challenged to follow through with marketing or planning the details required to do the work." (A.R. 532) She noted a concern that Stelzl "might be taken advantage of because of her good nature and her unwillingness to set limits." (*Id.*) Broomberg counseled Stelzl in developing a business plan and strategy. She noted Stelzl's "desire for financial independence may camouflage some of her cognitive challenges[.]" (*Id.*)

Stelzl saw counselor Broomberg on May 20, 2010. Treatment notes do not indicate what had occurred with regard to Stelzl's attempt to start a home-based business. Notes indicate Stelzl was "having a tough time finding a job or knowing what she could do." (A.R. 533) Broomberg noted Stelzl "seem[ed] disengaged from realistic thinking in terms of her capacities or follow through with regard [to] career development." (*Id.*) On June 2, 2010, Stelzl was noted to be frustrated due to her parents' over-protectiveness. Stelzl questioned whether her upcoming Social Security hearing was necessary. Broomberg noted, "[Stelzl] would like to believe that she could be able to support herself financially and with her life choices. Though her desire for independence is clear and driven, as her therapist I question her capacity to manage an independent life without support. She is easily overwhelmed, is challenged by personal organization and is limited in terms of her scope of focus." (A.R. 534) She noted Stelzl's thinking could become circular when Stelzl was agitated. (*Id.*)

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B. Stelzl's Testimony

1. Hearing testimony

At the time of the hearing, Stelzl was 39+ years old. She is a high school graduate, and earned an Associate's degree in Liberal Studies. She stated she did not receive any special accommodations while she earned her degree, but it took her six years to earn the degree.[7] She went to school "sort of" full time, but for the first year-and-a-half or two years, she was undecided about her major. (A.R. 37)

Stelzl stated she has lived independently "[s]ince college which would have been . . . 1990." (A.R. 38) Since January 2003, she has worked twelve hours per week at Bell Real Estate.[8] She also works four hours every other week "doing elder care and house-cleaning." (*Id.*) At one time, she trained for a job doing telephone surveys, but she only worked at the job for about two days because she found it too stressful. (A.R. 38-39) From September 1995 to around April 2000, she worked part time as a kitchen helper at a rehabilitation center, earning minimum wage. She indicated she might have been able to work full time at the facility if a position had been available. She stated she left the job because she did not feel safe at the facility. (A.R. 39-41) She worked for about a week as a switchboard operator at an auto dealership, but left because the job was "more than [she] could handle." (A.R. 47-48) She had

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[7]Stelzl's mother, however, testified Stelzl was given extra time to take tests. (*See* A.R. 58)

[8]The ALJ indicated Stelzl's past work had not been at the substantial gainful activity level, but because Stelzl had been at the real estate job for so long, the ALJ was "going to consider it past relevant work." (A.R. 40)

to use a computer, and there were a lot of buttons and extensions, as well as dealing with walk-in customers. She took notes and tried to remember what to do, but it was overwhelming and too difficult for her. (A.R. 49-50)

Stelzl stated she only does filing at the real estate office. She "used to do the phones but it was too much multi-tasking," which she was unable to handle. (A.R. 44; *see* A.R. 50-51) She files papers, and puts "keys from the key box into the . . . correct folder." (*Id.*) She has never received a raise at the job, and has always worked only twelve hours a week. At one point, she asked for more hours, but the office did not need her more than the twelve hours a week. (A.R. 51-52) At her elder care job, she makes breakfast for her clients, feeds their animals, cleans litter boxes and takes dogs outdoors, and does general housecleaning, including sweeping, mopping, vacuuming, and changing linens. (A.R. 45) She was continuing to look for other part-time work, but had not found anything. (A.R. 52) She stated she enjoys "working with color and design," and thought about becoming an interior decorator, but she felt that "Eugene, Oregon, is not really the place where they would actually hire somebody as an interior decorator." (*Id.*)

Stelzl stated that at the time of the ALJ hearing, she was taking low-dose aspirin four times daily, Accupril (a blood pressure medication), Simvastatin (for high cholesterol), Zoloft (an antidepressant), and Symlin (used as an adjunct to insulin therapy for Type I diabetics).[9] She stated she has problems regulating her blood sugars. When her blood sugar is too high, her vision gets

[9] *See* www.rxlist.com.

blurry, and when it is too low, she gets confused and disoriented. She has to prick her fingers several times a day, so her fingers often hurt, and she takes insulin shots eight times a day, often causing bruises. (A.R. 42-43)

Stelzl stated she is unable to work full-time due to her diabetes. She might do really well one day, and not well the next. In addition, she is bothered by loud noises, especially high-pitched noises like an ambulance siren. (A.R. 43-44)

For entertainment, Stelzl enjoys bowling. She was in a league for a couple of years, but was not in a league at the time of the hearing. She spends several hours a week with a girlfriend doing scrapbooking and making greeting cards. She does her own grocery shopping about once a week. She drives a car, and does her own housekeeping. (A.R. 44-45. 52) She has checking and savings accounts, but has difficulty keeping track of her funds to prevent overdrafts. She stated her account had been overdrawn four or five times during the previous year. (A.R. 45-46) She receives food stamps, and her parents provide her with substantial financial support. (A.R. 46)

Stelzl estimated she could not lift more than ten pounds comfortably because she has "back issues." (*Id.*) She "pulled something" in her back when she was working at the rehab facility. She took pain and anti-inflammatory medications for awhile, and received chiropractic treatments, but her back continues to bother her. (*Id.*) Her only exercise is housecleaning, which she stated is "definitely exercise." (A.R. 47)

Stelzl stated she can sit for 15 to 30 minutes at a time before she gets stiff. If she gets up and walks around for about 15

minutes, she can sit back down. She stated she has "really no issues right now with standing." (*Id.*) She can "probably walk [for] well over an hour." (*Id.*) She sometimes has problems using her hands because she gets wrist pain, which makes it difficult to use the restroom, bathe, brush her hair, and things involving "those little muscles and things in your wrist[.]" (A.R. 48) The wrist pain is not constant, and she has not mentioned it to her doctor. (*Id.*) In addition, her fingers sometimes get numb. (*Id.*)

Stelzl indicated she was diagnosed with sleep apnea in December 2008, which explained her "extreme exhaustion for pretty much . . . many years[.]" (A.R. 53) She stated a CPAP has been helpful for her, but she sometimes forgets to take the cord with her when she goes on vacation or to visit someone. At home, she uses the CPAP every night. (A.R. 53) She no longer requires a nap during the day. (A.R. 48)

Stelzl stated she has migraine headaches, which occur a couple of times a year. Stress and holidays can cause her to have a migraine. She can usually "take two aspirin and . . . sleep it off." (A.R. 54) She stated she has a lot of stress in her life around trying to find a job, support herself, and make ends meet. She wants to be independent from her parents, and she worries about money a lot, which is exhausting and makes her feel depressed. (*Id.*)

Stelzl stated she received vocational rehabilitation services at one time. She took a typing class, and worked as a volunteer at DHS for about six months, but never could find a paying job. (A.R. 55)

2. Written testimony

On December 5, 2008, Stelzl completed a function report, describing how her impairments limit her activities. (A.R. 175-82) Stelzl described her daily activities as follows:

> Work day: get up, take blood test & insulin, eat breakfast, feed cats, get dressed, drive to work, work 4 hours[,] take blood test & insulin, eat lunch, go home, get mail from mailbox, check phone messages, watch TV, sometimes I run errands, scrapbook pictures for photo album, take blood test/insulin[,] make dinner & eat it, watch TV, check e-mail, talk on phone[,] take blood test/insulin then go to bed.

(A.R. 175) Stelzl lives alone with three cats that she cares for herself. She has no problems with her personal care. Her sleep sometimes is affected by sleep apnea, back pain, and migraine headaches. (A.R. 176) She does not need reminders to take her medications, or to care for herself. She prepares her own meals daily, weighing and calculating her carbohydrate intake. She does household chores and yard work without assistance, and these chores take her about three hours a week. (A.R. 177) She gets out of the house daily, and drives herself wherever she needs to go. She does her own shopping for groceries, prescriptions, and scrapbooking supplies. She pays her own bills and uses a checkbook.[10] (A.R. 178)

Stelzl indicated her file clerk job requires her to do the following during her work day: lift no more than ten pounds, walk for about one hour, stand for one hour, sit for two hours, and stoop

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[10] *But see* A.R. 186-87, Leslie Stelzl's testimony regarding Stelzl's ability to manage her money and keep her checkbook balanced.

for about half an hour. Her job duties include using a Pitney Bowes postage machine, folding and stuffing envelopes, and general filing. (A.R. 179)

C. Third-Party Testimony

1. Leslie Stelzl's hearing testimony

Stelzl's mother Leslie Stelzl ("Leslie") testified at the haring.[11] Leslie indicated there had not been any significant changes in Stelzl's functioning, or the assistance provided to Stelzl by her parents, since the third-party function report Leslie completed in 2008.[12] (A.R. 56)

Leslie stated she had reviewed Dr. McConochie's report, and it contains several inaccuracies. First, the report states Stelzl has Type II diabetes, when she actually has Type I. Leslie stated Stelzl "has not been in good control virtually since she was diagnosed at age 15. She has a lot of trouble feeling highs and lows and she has actually passed out at [a] volunteer job[] for more than four hours and not been found." (A.R. 57) Leslie also got a call from an employment agency once when Stelzl was there looking for jobs, "and the man who was interviewing her was in a panic because she was beginning to pass out[.]" (*Id.*)

Leslie stated Stelzl went into a diabetic coma once, in 1997, and was in intensive care. The ALJ explained that 1997 was well beyond the time frame being considered in this case. The ALJ stated

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[11]Stelzl left the hearing room while her mother testified. (A.R. 55)

[12]The third-party function report Leslie completed in 2008 is discussed in the next section of this opinion.

"she alleges 1971, but the farthest back we could go to pay benefits would be October of 2007. So that's the timeframe we're interested in." (*Id.*)

Returning to Dr. McConochie's report, Leslie noted the following additional inaccuracies:

> Page 2 it states that she was tested in 1995 when she was six years old. She would have been 24 at that time. It also states that she drove herself to this appointment. No she didn't, I took her. At the bottom of that page the background information suggests this diagnosis of Asperger's was made in childhood and it was not. She was about 33 years old. On page 3 it says that from the sixth grade she was given extra help, otherwise she did fine. She actually was in a special school within a school and from age first grade on she had a private tutor, [and] she was in a special resource room. She has throughout her life always had counseling, tutoring, special classes.

(A.R. 57-58) Leslie stated that although Stelzl obtained a two-year degree, she was given extra time to take tests, and it took her "six years to do all but one class." (A.R. 58)

Leslie noted that on page 4 of Dr. McConochie's report, he "states something about her headaches. Her headaches aren't just headaches, they're migraines. They totally incapacitate her to the point of vomiting." (A.R. 59) According to Leslie, her daughter's migraines occur whenever she is "under a lot of stress or anxiety." (*Id.*) She indicated Stelzl's migraines occur "at a minimum twice a year." (*Id.*) The report also indicates Stelzl is not "in excessive debt and that she can manage money." (A.R. 60) Leslie stated that was incorrect, indicating she has "bailed [Stelzl] out" more times than she could count. Leslie has covered $10,000 to $12,000 that was run up on Stelzl's credit card when Stelzl was

married to "an inappropriate husband." (*Id.*) Leslie pays Stelzl's medical bills and prescription bills, and gives Stelzl a weekly allowance. (*Id.*) She stated Stelzl recently incurred a $2,500 veterinarian bill for "sick cats." (*Id.*) "On a continuing basis, probably five times a year, [Leslie makes] good sized payments on credit card bills that [Stelzl] has racked up." (A.R. 61)

Besides providing Stelzl financial assistance, Leslie also helps guide Stelzl in managing her diabetes, managing her time to prevent stress and anxiety, helping her "organize and accomplish things," reminding her of doctor and dental appointments, and trying to budget her money. (A.R. 60, 61)

Leslie opined Stelzl probably could work more than twelve hours per week, but, in Leslie's opinion, "she could not handle a full-time job." (A.R. 62) According to Leslie, the "stress and the anxiety" from a full-time job would cause Stelzl to have migraines. In addition, if she worked full time, Stelzl would not be able to see her nutritionist and endocrinologist as often as needed. (*Id.*)

According to Leslie, Stelzl's father subsidizes her salary at the real estate office. Stelzl makes $10.00 an hour, of which her father pays $4.00. (A.R. 63; *see* A.R. 226) Leslie acknowledged that Stelzl is doing well as far as her work, living alone, driving, and hobbies. (A.R. 65) But Leslie reiterated her belief that Stelzl would be unable to work full time. She stated, "[T]he stress and the anxiety of having a full-time job would trigger the migraines to the point where she would just be incapable of functioning. And that starts off a chain reaction. The migraine is so painful [and] then goes into vomiting, then goes into an insulin overload and if that gets to a degree then she's hospitalized. She

can't keep down food." (A.R. 66) She stated Stelzl is "easily overwhelmed," and "has ver poor judgment as far as people. . . . There are a lot of safety issues involved with this girl." (A.R. 66-67)

2. Leslie Stelzl's written testimony

On December 5, 2008, Leslie completed a third-party function report regarding her daughter. (A.R. 183-91) Leslie stated Stelzl works three days a week for four hours each day. Stelzl watches TV, scrapbooks, cleans, does yard work (raking and sweeping), runs errands, and cares for her cats. She feeds her cats, and obtains veterinary services for them as required. Leslie indicated she helps Stelzl financially when necessary. (A.R. 183-84) According to Leslie, Stelzl's sleep is affected by headaches that are "so severe [she] can't sleep." (A.R. 184) Stelzl also has sleep apnea that "prevents sound restful sleep," and "back episodes [that] cause pain severe enough to affect rest & sleep." (*Id.*)

Leslie indicated Stelzl has no problems with her personal care, and does not need reminders to care for her personal hygiene and grooming. Leslie stated Stelzl sometimes requires assistance with her insulin, and when she has a severe migraine and "can't keep down food." (A.R. 185) She indicated Stelzl does her own cooking each day, and her own household chores and yard work. Leslie stated she sometimes assists Stelzl in cleaning her house, and Stelzl sometimes needs "verbal encouragement" to keep her house clean. (*Id.*) Leslie indicated Stelzl drives when she goes out, and does her own shopping for groceries and scrapbooking materials. According to Leslie, Stelzl has problems with overdrawing her checking account, so Stelzl

"uses money orders to pay the bills she can or she uses cash." (A.R. 186) She indicated Stelzl "has NEVER been able to manage money." (A.R. 187; emphasis in original)

Leslie indicated Stelzl "bowls in a disabled league," goes to church on Sundays, and scrapbooks with an autistic friend. She stated Stelzl enjoys "watching TV, scrapbooking, listening to music, bowling, [and] seeing movies." (*Id.*) According to Leslie, Stelzl has problems communicating clearly, and this "social deficit makes some events very difficult for her, particularly when [in] large groups." (A.R. 188) Leslie indicated Stelzl has problems with lifting and bending due to a "chronic back problem." (*Id.*) She indicated Stelzl does not handle stress well, avoiding "issues until she melts down," and getting "very severe" migraines due to stress. (A.R. 189) She indicated changes in routine are difficult for Stelzl, but Stelzl "usually does okay" if she has "plenty of warning" prior to a change in routine. (*Id.*) Leslie stated her daughter is "obsessive compulsive re locking doors, checking range top, car doors, checking watch for time. Great fear of being 'wrong'." (*Id.*)

Regarding Stelzl's ability to concentrate, and to understand verbal instructions, Leslie stated: "She can focus on TV, scrap-booking for long periods of time. Instructions & explanations on topics not of interest, her attention span is very limited. I suspect mostly because she's not understanding. She does not multitask and cannot follow long or complex instructions." (A.R. 190) She indicated Stelzl can finish a movie, but when it comes to completing chores, Stelzl gets distracted frequently. (*Id.*) She indicated Stelzl does better with written instructions than with

verbal ones, but she does not do well if instructions are more than three steps. (A.R. 188)

3. Statement from Stelzl's Supervisor

Amanda Tuski, General Manager of Bell Real Estate, wrote a letter dated September 9, 2010. Tuski stated Stelzl had worked in the office as a file clerk since January 2003. She noted Stelzl did her job well, but "the scope of her tasks [was] very limited." (A.R. 230) Tuski indicated they had tried to give Stelzl additional tasks from time to time, but she was unable to perform the tasks adequately. Tuski went on to state as follows:

> If we had enough work to warrant a full-time file clerk, we would not hire [Stelzl]. It is my belief that [Stelzl] is working to her full capacity at 12 hours per week. She seems really ready to go after her 4-hour shift. I do not think she could work full time.

(*Id.*)

D. Vocational Expert's Testimony

The VE categorized Stelzl's past work as kitchen helper, which is an unskilled job, medium exertional level, with an SVP of 2[13];

[13]Jobs are classified with an "SVP," indicating the level of "specific vocational preparation" required to perform the job, according to the *Dictionary of Occupational Titles*. The SVP "is defined as the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation." *Davis v. Astrue*, slip op., 2011 WL 6152870, at *9 n.7 (D. Or. Dec. 7, 2011) (Simon, J.) (citation omitted). "The DOT identifies jobs with an SVP level of 1 or 2 as unskilled, jobs with an SVP of 3 or 4 as semi-skilled, and jobs with an SVP of 5 or higher as skilled." *Whitney v. Astrue*, slip op., 2012 WL 712985, at 3 (D. Or Mar. 1, 2012) (Brown, J.) (citing SSR 00-4p).

and file clerk, a light, semi-skilled job with an SVP of 3. The VE noted Stelzl was not performing the full range of file clerk duties, "so it could be at the unskilled SVP 2 level." (A.R. 69) In addition, he noted the contribution to Stelzl's wages by her father was "an accommodation." (*Id.*)

The ALJ asked the VE to consider an individual of Stelzl's age, with a community college education, who is capable of performing light work "limited to . . . tasks no more complex than one to three steps or the equivalent of SVP2, entry level work. . . . The individual due to episodes of hypoglycemia should never be exposed to hazards and should never climb ladders, ropes or scaffolds. The individual . . . should have no public contact but can handle brief superficial coworker contact." (A.R. 70) The VE indicated the hypothetical individual would be unable to return to Stelzl's past work as a kitchen helper.[14] However, the VE opined the individual "would be able to do a job as a document preparer[,] . . . an unskilled, sedentary job," with an SVP of 2. (A.R. 70-71) In addition, the individual could work as an eyeglass assembler, "an unskilled sedentary job." (A.R. 71) The VE further stated it

[14]The VE's testimony is unclear as to whether someone limited to one- to three-step tasks could perform the file clerk job. The VE indicated the file clerk job ordinarily is "a light job, semi-skilled, SVP3"; however, as Stelzl was performing the job, it "may be a little less multitasking and involved than the full range of file clerk duties, so it could be at the unskilled SVP 2 level." (A.R. 69) The VE testified the individual in the ALJ's hypothetical question "couldn't be kitchen helper as it's a medium exertional level." (A.R. 70) The VE then stated, "Well - and if we accept my - where I'm stating she's working outside of the normal designation for file clerk --," and the ALJ responded, "I'll accept that." (*Id.*) It is not clear whether the VE was indicating the hypothetical individual could, or could not, perform the file clerk job as Stelzl was performing it.

"sounds as if [Stelzl] may have some hand skills," so she also could work as a small product assembler, an unskilled, light job. (*Id.*)

If the hypothetical individual "had no limits on standing but could only tolerate sitting for about a half an hour at a time," she would be unable to perform the eyeglass assembler job, but could perform the document preparer job, which would allow for a short break every half hour. (*Id.*) In addition, the individual could work as a garment bagger, a light job. (A.R. 72) If the individual would miss half a day of work per month for medical appointments, she still would be able to perform these jobs. The VE indicated that at the unskilled level, most employers would tolerate "no more than a range between two and three" days off work per month. (*Id.*)

Returning to the ALJ's first hypothetical question, if the individual were limited to lifting no more than ten pounds, she still could work as a document preparer, eyeglass assembler, and small product assembler. (*Id.*)

In colloquy with Stelzl's attorney, the ALJ took administrative notice that if Stelzl's mental limitations were as found by counselor Lester (*see* A.R. 491-95), then Stelzl would be precluded from all work. (A.R. 73)

III. DISABILITY DETERMINATION AND THE BURDEN OF PROOF

A. Legal Standards

A claimant is disabled if he or she is unable to "engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which . . . has lasted or can be expected to last for a continuous period of not less than 12 months[.]" 42 U.S.C. § 423(d)(1)(A).

"Social Security Regulations set out a five-step sequential process for determining whether an applicant is disabled within the meaning of the Social Security Act." *Keyser v. Commissioner*, 648 F.3d 721, 724 (9th Cir. 2011) (citing 20 C.F.R. § 404.1520). The Keyser court described the five steps in the process as follows:

> (1) Is the claimant presently working in a substantially gainful activity? (2) Is the claimant's impairment severe? (3) Does the impairment meet or equal one of a list of specific impairments described in the regulations? (4) Is the claimant able to perform any work that he or she has done in the past? and (5) Are there significant numbers of jobs in the national economy that the claimant can perform?

Keyser, 648 F.3d at 724-25 (citing *Tackett v. Apfel*, 180 F.3d 1094, 1098-99 (9th Cir. 1999)); *see Bustamante v. Massanari*, 262 F.3d 949, 953-54 (9th Cir. 2001) (citing 20 C.F.R. §§ 404.1520 (b)-(f) and 416.920 (b)-(f)). The claimant bears the burden of proof for the first four steps in the process. If the claimant fails to meet the burden at any of those four steps, then the claimant is not disabled. *Bustamante*, 262 F.3d at 953-54; *see Bowen v. Yuckert*, 482 U.S. 137, 140-41, 107 S. Ct. 2287, 2291, 96 L. Ed. 2d 119 (1987); 20 C.F.R. §§ 404.1520(g) and 416.920(g) (setting forth general standards for evaluating disability), 404.1566 and 416.966 (describing "work which exists in the national economy"), and 416.960(c) (discussing how a claimant's vocational background figures into the disability determination).

The Commissioner bears the burden of proof at step five of the process, where the Commissioner must show the claimant can perform other work that exists in significant numbers in the national economy, "taking into consideration the claimant's residual

functional capacity, age, education, and work experience." *Tackett v. Apfel*, 180 F.3d 1094, 1100 (9th Cir. 1999). If the Commissioner fails meet this burden, then the claimant is disabled, but if the Commissioner proves the claimant is able to perform other work which exists in the national economy, then the claimant is not disabled. *Bustamante*, 262 F.3d at 954 (citing 20 C.F.R. §§ 404.1520(f), 416.920(f); *Tackett*, 180 F.3d at 1098-99).

The ALJ also determines the credibility of the claimant's testimony regarding his or her symptoms:

> In deciding whether to admit a claimant's subjective symptom testimony, the ALJ must engage in a two-step analysis. *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996). Under the first step prescribed by *Smolen*, . . . the claimant must produce objective medical evidence of underlying "impairment," and must show that the impairment, or a combination of impairments, "could reasonably be expected to produce pain or other symptoms." *Id.* at 1281-82. If this . . . test is satisfied, and if the ALJ's credibility analysis of the claimant's testimony shows no malingering, then the ALJ may reject the claimant's testimony about severity of symptoms [only] with "specific findings stating clear and convincing reasons for doing so." *Id.* at 1284.

Batson v. Commissioner, 359 F.3d 1190, 1196 (9th Cir. 2004).

B. The ALJ's Decision

The ALJ found Stelzl has not engaged in substantial gainful activity since her alleged disability onset date of January 19, 1971. (A.R. 14) She found Stelzl has severe impairments consisting of "insulin dependent type 1 diabetes mellitus and pervasive developmental disorder, not otherwise specified." (*Id.*) The ALJ noted that although Stelzl's diagnosis "does not satisfy all the criteria, it is most consistent with Asperger's syndrome, as it is primarily

characterized by difficulties with social interactions." (A.R. 15) The ALJ found Stelzl's other mental and physical complaints, including "history of mood disorder, sleep apnea, back pain, severe learning disability and borderline intellectual functioning," are no more than transient, and the evidence does not establish that any of those impairments causes Stelzl any significant vocational limitations. The ALJ therefore found those other impairments to be non-severe. (*Id.*)

The ALJ further found that none of Stelzl's impairments, singly or in combination, meets or medically equals a listed impairment, particularly considering listing 12.10 (Autism and Other Pervasive Development Disorders). The ALJ found Stelzl has mild restriction of the activities of daily living, moderate limitations in social functioning, and moderate limitations with regard to concentration, persistence, or pace. She found Stelzl has had no extended episodes of decompensation. (A.R. 16-17)

The ALJ found Stelzl has the RFC to lift/carry up to 20 pounds occasionally and 10 pounds frequently; stand/walk up to six hours in an eight-hour work day; and sit for up to six hours in an eight-hour work day. She would be "limited to tasks no more complex than one to three steps, equivalent to entry level work in the Dictionary of Occupational Titles," with no work around hazards due her hypoglycemic episodes, and she should have "no contact with the general public, though brief, superficial contact with co-workers is permissible." (A.R. 17)

The ALJ found Stelzl's "statements concerning the intensity, persistence and limiting effects of [her] symptoms are not credible to the extent they are inconsistent with the above residual func-

tional capacity assessment." (A.R. 18) She found Stelzl's reported daily activities and overall level of functioning to be inconsistent with her allegations of disability. The ALJ noted that despite being given the opportunity to do so, Stelzl failed to provide records that she received accommodations in connection with her schooling, only providing a "transcript showing that her grades were average." (*Id.*) In addition, she found the record evidence fails to show Stelzl would be unable to perform in a full-time job. The ALJ also noted that a person's inability to manage credit card debt "is not necessarily indicative of disability." (A.R. 19)

The ALJ further noted Stelzl had traveled to Costa Rica for eight days in August 2004. She observed such a trip would have "required airport check-ins with luggage, and standing in security lines and customs and immigration lines, and dealing with fellow passengers, as well as airline and customers ands immigration personnel." (A.R. 18) The ALJ observed that "[a]lthough travel and disability are not necessarily mutually exclusive, [Stelzl's] decision to travel abroad tends to suggest that the alleged symptoms and limitations may have been overstated and erodes the credibility of her allegations. The capacity to travel may also be viewed as inconsistent with allegations of disabling pain and social limitations." (*Id.*)

The ALJ gave only "limited weight" to the opinions of Dr. Gordon, and counselors Lester and Broomberg, that Stelzl is unable to work full time. The ALJ found Dr. Gordon's opinion that Stelzl would be unable to work is inconsistent with Dr. Gordon's treatment notes. The ALJ noted counselors Lester and Broomberg are not "acceptable treating sources," and further, "Ms. Lester did not

even provide session notes." She gave "no weight" to Lester's opinion regarding Stelzl's mental RFC. (*Id.*)

The ALJ gave "substantial weight" to Dr. McConochie's evaluation and opinion regarding Stelzl's mental RFC. The ALJ noted Dr. McConochie had "opined that [Stelzl] could handle routine activities of daily living, and she demonstrated no significant impairment understanding and remembering instructions or sustaining concentration, persistence, and pace." (*Id.*) Although the ALJ acknowledged Dr. McConochie's report contains some errors, as noted by Leslie Stelzl in her testimony, the ALJ found that "nothing in the discrepancies [Leslie] reported affects [the doctor's] conclusions or changes the weight given to . . . those conclusions." (A.R. 20) The ALJ found Leslie's testimony was "based largely on the self-report of [Stelzl] to her mother," and was inconsistent with the medical evidence of record. (*Id.*) Therefore, although the ALJ considered Leslie's testimony, she found it had "little probative value." (*Id.*)

The ALJ found Stelzl has no past relevant work as defined in the regulations. She found, "Considering [Stelzl's] age, education, and work experience, and residual functional capacity, there are jobs that exist in significant numbers in the national economy that [she] can perform." (*Id.*) She found Stelzl can perform less than the full range of light work. Based on the VE's testimony, the ALJ concluded Stelzl would be able to work as a file clerk,[15] eyeglass

[15]The ALJ found Stelzl could work as a file clerk, despite the lack of clear testimony by the VE regarding her ability to perform that job. *See* note 14, *supra*.

assembler, small products assembler, and garment bagger. She therefore concluded Stelzl is not disabled. (A.R. 20-21)

IV. STANDARD OF REVIEW

The court may set aside a denial of benefits only if the Commissioner's findings are "'not supported by substantial evidence or [are] based on legal error.'" *Bray v. Comm'r of Soc. Sec. Admin.*, 554 F.3d 1219, 1222 (9th Cir. 2009) (quoting *Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 882 (9th Cir. 2006)); *accord Black V. Comm'r of Soc. Sec. Admin.*, slip op., 2011 WL 1930418, at *1 (9th Cir. May 20, 2011). Substantial evidence is '"more than a mere scintilla but less than a preponderance; it is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Id.* (quoting *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995)).

The court "cannot affirm the Commissioner's decision 'simply by isolating a specific quantum of supporting evidence.'" *Holohan v. Massanari*, 246 F.3d 1195, 1201 (9th Cir. 2001) (quoting *Tackett v. Apfel*, 180 F.3d 1094, 1097 (9th Cir. 1998)). Instead, the court must consider the entire record, weighing both the evidence that supports the Commissioner's conclusions, and the evidence that detracts from those conclusions. *Id.* However, if the evidence as a whole can support more than one rational interpretation, the ALJ's decision must be upheld; the court may not substitute its judgment for the ALJ's. *Bray*, 554 F.3d at 1222 (citing *Massachi v. Astrue*, 486 F.3d 1149, 1152 (9th Cir. 2007)).

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V. DISCUSSION

Stelzl argues the ALJ erred in several respects in rendering her decision in this case. Each of her arguments is discussed below.

A. Credibility Analysis

Stelzl argues the ALJ failed to give clear and convincing reasons for rejecting her testimony. *See Batson*, 359 F.3d at 1196. The ALJ listed five reasons for finding Stelzl's testimony less than fully credible. Stelzl asserts each of those reasons is rebutted by the evidence.

1. Activities of daily living

The ALJ found Stelzl's activities of daily living are inconsistent with her allegations of disability. The ALJ stated, "For example, [Stelzl] reported during a consultative examination with William A. McConchie, Ph.D., that she could be on her feet and busy for a couple of hours before she has to rest." (A.R. 18) The ALJ noted that although Stelzl's mental disorder "is primarily characterized by difficulties with social interactions," Stelzl nevertheless has been "active in a bowling league and has friends with whom she regularly socializes." (*Id.*) The ALJ found these activities contradicted Stelzl's hearing testimony that she has "significant difficulties engaging in social activities with others." (*Id.*) Stelzl argues her mother clarified that the bowling league was for disabled individuals, and Stelzl did scrapbooking with one autistic friend. Stelzl argues her social deficits "would be less of a problem" in those types of situations. Dkt. #14, p. 12.

The Ninth Circuit "has repeatedly asserted that the mere fact that a plaintiff has carried on certain daily activities . . . does not in any way detract from her credibility as to her overall disability." *Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001); *accord Orn v. Astrue*, 495 F.3d 625, 639 (9th Cir. 2007) (citing *Vertigan*). The Ninth Circuit recognizes two grounds for using daily activities to form the basis of an adverse credibility determination. The first is when a claimant's daily activities contradict the claimant's other testimony. The second is when the "'claimant is able to spend a substantial part of his day engaged in pursuits involving the performance of physical functions that are transferable to a work setting.'" *Orn*, 495 F.3d at 639 (quoting *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989); citing *Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005)).

In the present case, the Commissioner relies on the first of these two grounds, finding Stelzl's self-reports about her functional abilities are inconsistent with her allegations of disability. The ALJ found the evidence shows Stelzl "lives independently and is capable of handling routine activities of daily living, though she depends on family for shelter. . . . She is able to dress and bathe herself, tie her shoes and make telephone calls. She is also able to drive, complete routine household chores, grocery shop, and cook meals for herself." (A.R. 16; exhibit citation omitted) The ALJ further noted that Stelzl told Dr. McConochie "she has three friends whom she sees occasionally and with whom she makes dinner, goes to the movies and does hand crafts." (*Id.*, citing A.R. 504) The Commissioner argues that even if the evidence would support a different interpretation, an ALJ may discount a claimant's equivocal

testimony as long as the ALJ's interpretation of the evidence is reasonable, and supported by substantial evidence. Dkt. #15, p. 8 (quoting *Fair v. Bowen*, 885 F.2d 597, 604 (9th Cir. 1989)).

"If substantial evidence supports the administrative findings, or if there is conflicting evidence supporting a finding of either disability or nondisability, the ALJ's decision is conclusive, . . . and may be set aside only if an improper legal standard was applied in weighing the evidence." *Karout v. Astrue*, slip op., 2013 WL 1946222, at *3 (D. Or. May 6, 2013) (Aiken, CJ) (citations omitted). As related to Stelzl's *physical* abilities, the court agrees with the ALJ that Stelzl's self-reported daily activities are inconsistent with her allegations of disability. The same cannot be said with regard to Stelzl's mental abilities. The problem with relying on Stelzl's own testimony is her apparent inability to recognize her own limitations. The evidence indicates Stelzl consistently sees herself as more capable and independent than is shown by others' observations of her. Despite her expressed desire to live independently, the weight of the evidence indicates she is not capable of doing so. Her income is subsidized by her father; her parents assist her with shelter and money management; and although Stelzl engages in some social activities, they are in sheltered or supervised settings. The court finds the ALJ erred in relying on Stelzl's daily activities in discounting her credibility.

2. Educational pursuits

The ALJ cited Stelzl's ability to attend community college from 1989 to 1995, and her cumulative grade point average of 2.213, as evidence detracting from Stelzl's claim that she is disabled. (A.R.

18) Stelzl notes it took her from fall 1990, to July 1995, to obtain an Associate's degree, and her mother testified Stelzl "was given extra time for testing." Dkt. #14, p. 12. Thus, she argues it was error for the ALJ to weigh Stelzl's educational pursuits against her credibility.

Neither Stelzl nor the Commissioner cites persuasive authority to support their respective positions. *Bayliss v. Barnhart*, 427 F.3d 1211 (9th Cir. 2005), cited by the Commissioner, is distinguishable on its facts. The claimant in that case "was able to complete high school, college, and a Certified Nurses' Aide training program, in addition to participating in military training." Dkt. #15, p. 8, citing *Bayliss*, 427 F.3d at 1216. Bayliss's educational activities were far more extensive than Stelzl's. Nevertheless, the court agrees with the Commissioner that Stelzl's educational pursuits weigh against her disability claim. Even though it took her several years to complete her degree (roughly three times as long as normal), Stelzl took courses throughout that time period, and maintained a 2.213 grade average. Although she may have been given extra time to take tests, her ability to complete the work required for her courses, and to attend classes regularly, is evidence that she can maintain attention and concentration. The ALJ found Stelzl has moderate limitations in the area of concentration, persistence, or pace, but Stelzl "demonstrated good attention and concentration for the lengthy interview and testing process" during her evaluation by Dr. McConochie. (A.R. 16) In addition, Stelzl's regular attendance at her college courses contradicts her testimony that she is unable to be around people. The court finds the ALJ did not err in weighing Stelzl's educational pursuits against her credibility.

3. Ability to Travel

The ALJ noted Stelzl "traveled to Costa Rica for eight days" in August 2004. She noted such a trip would have "required airport check-ins with luggage, and standing in security lines and customs and immigration lines, and dealing with fellow passengers, as well as airline and customs and immigration personnel." (A.R. 18) The ALJ acknowledged that "[a]lthough travel and disability are not necessarily mutually exclusive, [Stelzl's] decision to travel abroad tends to suggest that the alleged symptoms and limitations may have been overstated and erodes the credibility of her allegations. The capacity to travel may also be viewed as inconsistent with allegations of disabling pain and social limitations." (*Id.*)

Stelzl notes the evidence indicates she was taking the trip to Costa Rica with her father, and she argues "it can be expected that he maneuvered their way th[r]ough security and customs and that [Stelzl] was not required to operate independently." Dkt. #14, p. 13 (citing A.R. 235). Standing alone, the single notation that Stelzl was planning a trip to Costa Rica with her father would not detract from Stelzl's credibility. However, taken together with the evidence as a whole, Stelzl's ability to travel at least calls into question her claim that she has problems "interacting socially with customers, clients, co-workers and supervisers [sic]." (A.R. 158) The ALJ noted the types of superficial interactions one can expect to have while traveling, such as standing in lines, and "dealing with fellow passengers, as well as airline and customs and immigration personnel" (A.R. 18), *suggests* Stelzl may have overstated her limitations in this regard. The court finds the ALJ did not err in

weighing this factor against Stelzl's credibility, considering the totality of the evidence.

4. Stelzl's work history

The ALJ found that although none of Stelzl's work has been at the substantial gainful activity level, the fact that she has been able to continue working part time for a sustained period of time indicates Stelzl's "activities, at least at times, have been somewhat greater than [she] has generally reported." (*Id.*) Stelzl notes her supervisor indicated the real estate office would not hire Stelzl full time even if there was a full-time position available, and Stelzl's tasks are very limited. The supervisor opined that Stelzl "is working to her full capacity at 12 hours per week," and likely could not sustain full-time work. (A.R. 230) Stelzl argues, "This statement from the employer is compelling evidence that [Stelzl] cannot sustain full time, competitive work." Dkt. #14, p. 13. Stelzl cites SSR 85-16 in support of this argument. SSR 85-16 advises that "relevant, reliable information, obtained from third party sources such as . . . employers, may be valuable in assessing an individual's level of activities of daily living." SSR 85-16, available at 1985 WL 56855. However, the Ruling goes on to state, "Information concerning an individual's performance in any work setting (including sheltered work and volunteer or competitive work) . . . may be pertinent in assessing the individual's ability to function in a competitive work environment." *Id.*

The ALJ considered the supervisor's statement that Stelzl performs well, within the limited scope of her duties. The ALJ did not rely on the supervisor's opinion regarding Stelzl's ability to

work full time - and rightly so. "Determinations regarding a claimant's ability to work are reserved for the Commissioner[,]" *Ranier v. Colvin*, slip op., 2013 WL 1809745, at 8 & n.1 (D. Or. Apr. 29, 2013) (Simon, J.); and even a medical source's opinion that a claimant is disabled is not controlling. *See* 20 C.F.R. §§ 404.1527(d) & (e), 416.927(d) & (e); SSR 96-5p, available at 1996 WL 374183.

The evidence indicates Stelzl has worked in a nursing home, has done some in-home elder care, and has worked part-time at the real estate office since 2003. The ALJ found Stelzl's "willingness and demonstrated ability to engage in some work activity further erodes the credibility of her allegations of disability." (A.R. 18) The problem with this finding is that, as the ALJ also found, Stelzl has *never* engaged in work at the substantial gainful activity level. Her work has been part-time, and her long-term, subsidized job has been tantamount to a sheltered work situation, where Stelzl has been given extremely limited duties, specifically chosen to fit within her limited abilities. The court finds the ALJ erred in concluding this type of work activity detracts from Stelzl's credibility.

5. Money management

The ALJ noted Stelzl testified "she manages her money independently," but Stelzl's mother testified she has to "bail" Stelzl out when Stelzl "mis-uses her credit cards. (A.R. 19) The ALJ concluded that while "[i]t may not be a good idea for [Stelzl] to have credit cards, . . . difficulty managing that kind of debt is not necessarily indicative of disability." (*Id.*) Stelzl's mother indicated Stelzl has problems balancing her checkbook, so Stelzl often pays her bills with money orders or cash. (A.R. 186) Stelzl,

herself, indicated she pays her own bills. (A.R. 178) This evidence indicates that although Stelzl may have difficulty handling credit, and even difficulty balancing a checkbook, she nevertheless is able to purchase money orders and pay her bills. The court finds ALJ did not err in finding this evidence undermines the credibility of Stelzl's claim that she is disabled.

6. Conclusion

The court finds substantial evidence does not support the ALJ's conclusion that Stelzl's allegations regarding her mental functional abilities are less than fully credible. The ALJ's error was in relying on discrete pieces of evidence out of the context of the evidence as a whole. The undersigned recommends the case be remanded with instructions to the ALJ to revisit the credibility determination in the context of the evidence as a whole.

B. Weight Given to Dr. Gordon's Opinion

Stelzl argues the ALJ failed to give proper weight to the opinion of Dr. Gordon, Stelzl's treating psychiatrist, that Stelzl "is not able to obtain further employment or pursue vocational training at this time in part due to the . . . diagnostic problem she struggles with." (A.R. 483) The ALJ found this statement to be inconsistent with Dr. Gordon's own treatment notes. (A.R. 19)

The ALJ determines the credibility of the medical testimony and also resolves any conflicts in the evidence. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1196 (9th Cir. 2004) (citing *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992)). Ordinarily, the ALJ must give greater weight to the opinions of treating physicians,

but the ALJ may disregard treating physicians' opinions where they are "conclusory, brief, and unsupported by the record as a whole, . . . or by objective medical findings." *Id.* (citing *Matney, supra*; *Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001)). If the ALJ disregards a treating physician's opinions, "'the ALJ must give specific, legitimate reasons'" for doing so. *Id.* (quoting *Matney*).

The law regarding the weight to be given to the opinions of treating physicians is well established. Generally, "[t]he opinions of treating physicians are given greater weight than those of examining but non-treating physicians or physicians who only review the record." *Benton ex rel. Benton v. Barnhart*, 331 F.3d 1030, 1036 (9th Cir. 2003). The *Benton* court quoted with approval from *Lester v. Chater*, 81 F.3d 821, 830 (9th Cir. 1995), where the court held as follows:

> As a general rule, more weight should be given to the opinion of a treating source than to the opinion of doctors who do not treat the claimant. At least where the treating doctor's opinion is not contradicted by another doctor, it may be rejected only for "clear and convincing" reasons. We have also held that "clear and convincing" reasons are required to reject the treating doctor's ultimate conclusions. Even if the treating doctor's opinion is contradicted by another doctor, the Commissioner may not reject this opinion without providing "specific and legitimate reasons" supported by substantial evidence in the record for so doing.

Id. (quoting *Lester, supra*).

Here, the ALJ made a one-sentence finding regarding Dr. Gordon's opinion: "The observations in Dr. Gordon's treatment notes are not consistent with the restricted opinion she provides." (A.R. 19) The ALJ did not discuss what evidence in Dr. Gordon's treatment notes was inconsistent with the doctor's opinion. An ALJ

may not reject a treating doctor's opinion without providing "specific and legitimate reasons' supported by substantial evidence in the record. . . . This can be done by setting out a detailed and thorough summary of the facts and conflicting clinical evidence, stating [the ALJ's] interpretation thereof, and making findings." *Orn v. Astrue*, 495 F.3d 625, 632 (9th Cir. 2007) (citations omitted). The *Orn* court further held, "The ALJ must do more than offer [her] conclusions. [She] must set forth [her] own interpretations and explain why they, rather than the doctors', are correct." *Id.* (citation omitted).

The ALJ in the present case failed to do any more than state her conclusion that Dr. Gordon's treatment notes were inconsistent with her opinion regarding Stelzl's functional capacity. The ALJ's failure to discuss the evidence underlying this conclusion was error. *See id.* On remand, the ALJ should be required to set forth Dr. Gordon's specific treatment notes that contradict the doctor's opinion regarding Stelzl's functional capacity.[16]

C. Weight Given to Counselors' Opinions

Stelzl argues the ALJ erred in rejecting the opinions of Nan Lester and Lola Broomberg. The ALJ gave Lester's and Broomberg's opinions "limited weight." (A.R. 19) The ALJ noted Lester and Broomberg do not qualify as "acceptable medical sources" under the

[16]If this were the ALJ's only error in this case, the court likely would find the error to be harmless, as Dr. Gordon's treatment notes do contain entries that are inconsistent with her conclusion. However, because the undersigned recommends remand for other reasons, the ALJ also should be required to correct this error, setting forth her reasons for rejecting Dr. Gordon's opinion.

regulations. (*Id.*) The ALJ found the opinions of Lester and Broomberg were inconsistent with "the results of formal testing and Dr. Gordon's treatment notes." (*Id.*) The ALJ further noted Lester had not provided any session notes, and although the mental RFC provided by Lester "is inconsistent with employment[,] . . . as it is unsupported by clinical notes, it is given no weight." (*Id.*)

Stelzl acknowledges that Lester and Broomberg are not "acceptable medical source[s]" under the regulations, but she argues the Social Security Administration has recognized that such a source may be entitled to more weight than an acceptable source, "'if he or she has seen the individual more often . . . and has provided better supporting evidence and a better explanation for his or her opinions.'" Dkt. #14, pp. 16-17 (quoting SSR 06-3p, available at 2006 WL 2329939). Stelzl further argues her counselors' opinions are consistent with the results of Stelzl's extensive evaluation at CDRC, and with many of Dr. Gordon's observations throughout their treatment relationship. Stelzl notes that over a six-year period, Dr. Gordon noted occasions when Stelzl had "a constricted, blunted or flat effect, little facial expression, and being 'somewhat disconnected emotionally.'" Dkt. #14, p. 17 (citing A.R. 291, 295, 311, 484). Dr. Gordon also noted times when Stelzl was "'slow-moving,' showing some perseveration, and tangentiality," as well as occasions when Stelzl reported suicidal ideation. *Id.* (citing A.R. 291, 295, 309, 485, 488).

Although the counselors' opinions differ from Dr. McConochie's conclusions, Stelzl argues that doctor's opinion "is, to a large extent, an aberration in the record." *Id.* She notes Dr. McConochie did not diagnose her with any mental condition at all, which

contrasts with the ALJ's own finding that Stelzl suffers from "a pervasive developmental disorder, most consistent with Asperger's syndrome." *Id.* The doctor's opinion that Stelzl "has only mild impairment in social functioning and has no impairment in concentration" also differs from the ALJ's finding that Stelzl has moderate limitations in these areas. *Id.* (citing A.R. 16, 499). Stelzl also points to internal inconsistencies in Dr. McConochie's report, noting that despite finding she has no limitation in concentration, the doctor also found Stelzl's processing speed is "in the borderline range and 'could be expected to limit her ability in jobs such as she has held as a file clerk and doing odd jobs in a nursing home.'" *Id.*, p. 18 (citing A.R. 506).

The Commissioner argues Stelzl's claim that the evidence supports the counselors' opinions is Stelzl's "own subjective view of the record that does not undermine the ALJ's holding." Dkt. #15, p. 14. The Commissioner notes the ALJ gave germane reasons for discounting each counselor's opinions; i.e., that their opinions "contradicted the formal tests and insignificant [sic] findings in Dr. Gordon's treatment notes." *Id.* (citing A.R. 19). The Commissioner further argues that even assuming a different conclusion could be drawn from the evidence, "'[w]here evidence is susceptible to more than one rational interpretation, it is the [Commissioner's] conclusion that must be upheld.'" *Id.* (quoting *Burch v. Barnhart*, 400 F.3d 676, 679 (9th Cir. 2005) (citations omitted). Further, with regard to Lester, the Commissioner argues "one of the key factors in weighing a medical opinion is its supportability," and, as the ALJ noted, Lester's opinion was wholly unsupported by any treatment notes. *Id.*, p. 15.

An ALJ may discount testimony from "other sources," such as Stelzl's counselors, "if the ALJ gives reasons germane to each witness for doing so." *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012) (internal quotation marks, citation omitted); *accord Blodgett v. Comm'r*, ___ Fed. Appx. ___, 2013 WL 3804070 (9th Cir. July 23, 2013). The ALJ met this standard, giving reasons germane to Lester and Broomberg for rejecting their testimony. Although the court has serious concerns about relying on Dr. McConochie's report due to the large number of errors it contains, the ALJ gave other reasons for discounting the counselors' opinions.

Further, the court rejects Stelzl's argument that her counselors' opinions were consistent with her evaluation at CDRC. That evaluation occurred in May 2003, nearly six years before Stelzl first saw Broomberg. Again, with no treatment notes from Lester, her opinion is wholly unsupported. The court finds the ALJ did not err in the weight he gave to the counselors' opinions.

D. Weight Given to Lay Witness Testimony

Stelzl argues the ALJ erred in rejecting Leslie Stelzl's testimony, which Stelzl argues was "highly consistent" with the opinions of Broomberg, Dr. Gordon, and the 2003 evaluation by Dr. Eisert. Dkt. #14, pp. 16-18. The ALJ found Leslie's "testimony was based largely on the self-report of the claimant to her mother," and was inconsistent with the medical evidence of record. (A.R. 20)

The court disagrees that Leslie's opinions regarding Stelzl's functioning were simply based on Stelzl's self-reports; rather, they were based on the mother's ongoing, regular observation of her daughter, and the assistance she provides Stelzl in managing her

finances, among other things. Leslie Stelzl's testimony was consistent with the opinions of Stelzl's treating physician, her counselors, her supervisor at work - indeed, with nearly everyone who has encountered this claimant. The court finds the ALJ erred in rejecting Leslie Stelzl's testimony.

E. Reliance on VE's Testimony

Stelzl argues the hypothetical question the ALJ posed to the VE "did not include the ALJ's own findings that [Stelzl] has moderate limitations in social functioning and in concentration, persistent [sic] or pace." Dkt. #14, p. 20 (citing A.R. 14-15). She notes the hypothetical question "included a limitation to entry level unskilled work[;] however, this has been found . . . not to incorporate limitations in concentration, persistence and pace." *Id.* (citing *Winschel v. Comm'r*, 631 F.3d 1176, 1179 (11th Cir. 2011); *Ramirez v. Barnhart*, 372 F.3d 546, 554 (3d Cir. 2004); *Stewart v. Astrue*, 561 F.3d 679, 684-85 (7th Cir. 2009) (*per curiam*)). Stelzl also argues the ALJ's hypothetical question failed to "address Dr. McConochie's test results showing that [Stelzl's] processing speed was in the borderline range and could be expected to limit her ability and [sic] jobs such as she has held as a file clerk and doing odd jobs in a nursing home." *Id.* (citing A.R. 505-06). She therefore argues the VE's testimony, based on an improper hypothetical question, cannot meet the Commissioner's burden to prove she is capable of full-time work within her RFC. *Id.*, pp. 19-20.

The Commissioner argues the ALJ's hypothetical question did not need to include her finding that Stelzl has moderate limitations in

social functioning, and in concentration, persistence, and pace. The Commissioner asserts those findings "pertained to step three [of the sequential evaluation process], where an ALJ must make generalized findings for purposes of determining whether [a claimant] medically met or equaled a recognized, listed impairment that shows presumptive disability." Dkt. #15, pp. 17-18 (citing 20 C.F.R. §§ 404.1520a(c)(3), 416.920a(c)(3); *Keyser V. Comm'r*, 648 F.3d 721, 725 (9th Cir. 2011)). The Commissioner argues those limitations found at step three are not the same as a claimant's RFC, or work-related abilities. *Id.* (citing SSR 96-8p, available at 1996 WL 374184, at *4; 20 C.F.R. 404.1520a(d)(3), 416.920a(d)(3) ("If we find that you have a severe mental impairment(s) that neither meets nor is equivalent in severity to any listing, we will then assess your residual functional capacity."). The Commission notes the ALJ "specifically reiterated this distinction in her decision." *Id.* (citing A.R. 17).

Stelzl's argument and the Commissioner's response highlight an ongoing issue among the courts regarding the relationship between an ALJ's findings at steps two and three, where the ALJ determines whether the claimant has a severe impairment that meets or equals a listed impairment; the RFC, which the ALJ determines at step four; and whether the hypothetical question posed to a VE must account for limitations identified in the step two/three inquiry. The court in *Winschel v. Commissioner of Social Security*, 631 F.3d 1176 (11th Cir. 2011), cited by Stelzl, noted that the Third, Seventh, and Eighth Circuits have rejected the Commissioner's position "that to include such limitations in a hypothetical question would inappropriately conflate [the] independent inquiries [at steps two/three

and step four][.]" *Id.*, 631 F.3d at 1180 (citing cases). The *Winschel* court also rejected the argument, finding that although the two inquiries are "undeniably distinct," nothing in the regulations precludes the ALJ from considering the results of the step two/three inquiry in his determination of the claimant's RFC. *Id.*

Specifically regarding what a proper hypothetical question must include, the *Winschel* court held as follows:

> Other circuits have also rejected the argument that an ALJ generally accounts for a claimant's limitations in concentration, persistence, and pace by restricting the hypothetical question to simple, routine tasks or unskilled work. *See Stewart v. Astrue*, 561 F.3d 679, 685-85 (7th Cir. 2009) (*per curiam*); *Ramirez [v. Barnhart]*, 372 F.3d [546,] 554 [(3d Cir. 2004)]; *Newton [v. Chater]*, 92 F.3d [688,] 695 [(8th Cir. 1996)]. But when medical evidence demonstrates that a claimant can engage in simple, routine tasks or unskilled work despite limitations in concentration, persistence, and pace, courts have concluded that limiting the hypothetical to include only unskilled work sufficiently accounts for such limitations. *See Simila v. Astrue*, 573 F.3d 503, 521-22 (7th Cir. 2009); *Stubbe-Danielson v. Astrue*, 539 F.3d 1169, 1173-76 (9th Cir. 2008); *Howard v. Massanari*, 255 F.3d 577, 582 (8th Cir. 2001). Additionally, other circuits have held that hypothetical questions adequately account for a claimant's limitations in concentration, persistence, and pace when the questions otherwise implicitly account for these limitations. *See White v. Comm'r of Soc. Sec.*, 572 F.3d 272, 288 (6th Cir. 2009) (concluding that the ALJ's reference to a moderate limitation in maintaining "attention and concentration" sufficiently represented the claimant's limitations in concentration, persistence, and pace); *Thomas v. Barnhart*, 278 F.3d 947, 956 (9th Cir. 2002) (concluding that the hypothetical question adequately incorporated the claimant's limitations in concentration, persistence, and pace when the ALJ instructed the vocational expert to credit fully medical testimony related to those limitations).

Winschel, 631 F.3d at 1180-81.

"A hypothetical question posed to a vocational expert must 'include all of the claimant's functional limitations, both physical and mental.'" *Brink v. Comm'r*, 343 Fed. Appx. 211, 212 (9th Cir. 2009) (quoting *Flores v. Shalala*, 49 F.3d 562, 570 (9th Cir. 1995)). Dr. McConochie opined that Stelzl's processing speed was "in the borderline range," which "could be expected to limit her ability in jobs such as she has held as a file clerk and doing odd jobs in a nursing home." (A.R. 505-06) He further noted Stelzl was slow at visual attention and task switching. (A.R. 506) He indicated Stelzl's "[o]verall ability to support herself has been marginal," and Stelzl is dependent on her family and local charities for subsistence. (A.R. 507, 511) He opined Stelzl's limitations are "probably congenital in nature," and there is a poor prognosis for any changes in her limitations. (A.R. 508, 511) Despite these findings, Dr. McConochie further opined Stelzl would be only mildly limited in her ability to carry out simple instructions, and make judgments on simple work-related decisions. (A.R. 510)

The ALJ gave "substantial weight" to Dr. McConochie's opinions in formulating Stelzl's RFC. (A.R. 19) The issue, then, is whether an RFC limiting Stelzl "to tasks no more complex than one to three steps, equivalent to entry level work in the Dictionary of Occupational Titles," encompasses the limitations found by Dr. McConochie. *See Amanti v. Comm'r*, 2012 WL 5879530, at *5 (D. Or. Nov. 19, 2012) (Marsh, J) ("Where the ALJ credits the opinion of a physician, the ALJ must translate the plaintiff's condition as described in the physician's opinion into functional limitations in the RFC."); *Brink*, 343 Fed. Appx. at 212 (ALJ erred in failing to include, in hypothetical question, medical opinion accepted by ALJ regarding

claimant's limitations); *see also Bickford v. Astrue*, 2010 WL 4220531, at *11-12 (D. Or. Oct. 19, 2010) (King, J) (ALJ, who found claimant had moderate limitations in concentration, persistence, or pace, erred in relying on state agency consultant's opinion that claimant could perform simple, repetitive tasks, where consultant concluded claimant's "mental impairment was not severe to begin with, and who opined that [claimant] had only mild difficulties in concentration, persistence or pace").

In *Bickford*, Judge King noted the cases differ on whether an individual "who suffers from moderate difficulties in concentration can perform simple, repetitive tasks." *Id.*, at *11 (citing *Stubbs-Danielson v. Astrue*, 539 F.3d 1169, 1174 (9th Cir. 2008); *Howard v. Massanari*, 255 F.3d 577, 582 (8th Cir. 2001)). Judge King held, "In short, so long as the ALJ's decision is supported by medical evidence, a limitation to simple, repetitive work can account for moderate difficulties in concentration, persistence or pace." *Id.*; *see Brink*, 2013 WL 1785803, at *7 ("[T]he ALJ translated plaintiff's moderate limitation in concentration, persistence, or pace into the only concrete restriction - i.e. for simple, repetitive tasks of one to three steps - outlined in the medical evidence.").

In the present case, the court finds a hypothetical question limiting the claimant to "tasks no more complex than one to three steps or the equivalent of SVP2, entry level work" fails to account for Dr. McConochie's opinion that Stelzl's processing speed likely "could be expected to limit her ability in jobs such as she has held as a file clerk and doing odd jobs in a nursing home," or his finding that Stelzl has a slow pace in visual attention and task switching. There was no testimony from the VE to indicate that one-

to three-step, entry-level tasks would meet those limitations. The appropriate remedy, therefore, is remand to the Commissioner "so that the ALJ can clarify [her] hypothetical and determine whether [Stelzl] is able to perform gainful employment in the national economy." *Brink*, 343 Fed. App. at 212-13 (citing *Benecke v. Barnhart*, 379 F.3d 587, 595 (9th Cir. 2004)).

VI. CONCLUSION

Upon review of a final decision of the Commissioner, the court may enter "a judgment affirming, modifying, or reversing the decision, . . . with or without remanding the cause" for further proceedings. 42 U.S.C. § 405(g). Here, the court finds further development of the record is warranted. Specifically, the ALJ should revisit her credibility analysis of Stelzl, in the context of all of the evidence of record, and should give greater weight to the testimony of Leslie Stelzl. The ALJ also should state her reasons for rejecting Dr. Gordon's opinion, and obtain new vocational testimony based on a hypothetical question that accurately encompasses all of Stelzl's limitations.

VII. SCHEDULING ORDER

These Findings and Recommendations will be referred to a district judge. Objections, if any, are due by **October 4, 2013.** If no objections are filed, then the Findings and Recommendations will go under advisement on that date. If objections are filed, then any response is due by **October 21, 2013.** By the earlier of the response

due date or the date a response is filed, the Findings and Recommendations will go under advisement.

IT IS SO ORDERED.

Dated this 16th day of September, 2013.

/s/ Dennis J. Hubel

Dennis James Hubel
Unites States Magistrate Judge